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Volume I.

(EVIDENCE FOR COMPLAINANT.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

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1 IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
THE UNION PACIFIC RAILROAD COMPANY, THE Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, The San Pedro, Los Angeles & Salt Lake Railroad Company; The Atchison, Topeka & Santa Fe Railway Company; The Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Farmers' Loan & Trust Company; Edward H. Harriman, Jacob H. Schiff, Otto H. Kahn, James Stillman, Henry H. Rogers, Henry C. Frick and William A. Clark, Defendants.

Pursuant to the order of Honorable Sylvester G. Williams, the Special Examiner in above-entitled cause, dated at Denver, Colorado, November 14, A. D. 1908, the parties hereinafter named appeared by counsel before the said Special Examiner, in Room 515, Custom House Building, Bowling Green, City of New York, on Tuesday, the first day of December, A. D. 1908, at 10:30 o'clock A. M.

Present: The following solicitors and counsel:

Messrs. C. A. Severance, John G. Milburn, Maxwell Evarts, W. R. Kelly, James F. Horan, Edward H. Blanc, Paul D. Cravath and John M. Freeman.

The following appearances were entered:

2 On behalf of the complainant: Hon. Charles J. Bonaparte, Attorney General of the United States; Hon. Hiram E. Booth, United States Attorney for the District of Utah; Messrs. F. B. Kellogg and C. A. Severance, Special Assistants to the Attorney General of the United States.

On behalf of The Union Pacific Railroad Company, The Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, Southern Pacific Company, and Edward H. Harriman: Messrs. John G. Milburn, John C. Spooner, R. S. Lovett and Maxwell Evarts.

On behalf of The San Pedro, Los Angeles & Salt Lake Railroad Company and William A. Clark: Mr. W. R. Kelly.

On behalf of The Atchison, Topeka & Santa Fe Railway Company: Mr. Walker D. Hines.

On behalf of The Farmers' Loan & Trust Company: Messrs. James F. Horan and Edward H. Blanc.

On behalf of Jacob H. Schiff and Otto H. Kahn: Mr. Paul D. Cravath.

On behalf of James Stillman and Henry H. Rogers: Mr. James M. Beck.

On behalf of Henry C. Frick: Messrs. D. T. Watson and John M. Freeman.

The EXAMINER. Are you ready to proceed now, Mr. Severance?

Mr. SEVERANCE. We are all ready.

The EXAMINER. Very well.

Mr. SEVERANCE. It is proposed at this hearing, or whatever hearing may be had in the next few days, that no oral testimony be
3 taken owing to the unfortunate illness of Judge Lovett, who expects to be present at the taking of all the oral testimony. But we have arrived at an arrangement by which there may be read into the record certain of the testimony which was taken before the Interstate Commerce Commission during the investigation which began in the City of New York on the 4th day of January, 1907, and continued at various places through the country during the six or eight weeks next ensuing. I think all the counsel stipulate to the use of this testimony, together with the exhibits accompanying the evidence of the witnesses, with the same force and effect as though the testimony had originally been taken before your Honor. It was all taken under oath. Therefore, we will offer certain of that testimony in evidence pursuant to this stipulation.

The EXAMINER. Have you the stipulation?

Mr. SEVERANCE. We have not any written stipulation. We will enter the stipulation on the record. Is that all right?

Mr. EVARTS. You will make that stipulation as you introduce the testimony of each of the witnesses.

Mr. SEVERANCE. First, we will offer, pursuant to this arrangement, portions of the testimony given by Alexander Millar, a witness before the Interstate Commerce Commission, who testified on the 4th day of January, 1907, at the City of New York. I understand that it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Millar were upon the stand giving the same testimony.

4 Mr. EVARTS. Yes.

Mr. SEVERANCE. Quite a little of this testimony is immaterial to this issue, and we will indicate that.

The EXAMINER. As you read it?

Mr. SEVERANCE. As we put it in. I will proceed to read this evidence. We will have to read at least the testimony of the first witness, question and answer, in order to get the exhibits in their proper places.

ALEXANDER MILLAR

testified:

Examined by Mr. KELLOGG:

Q. Your name is Alex. Millar?

A. Alexander Millar.

Q. You are the secretary of the Union Pacific Railroad, are you not?

A. Yes, sir.

Q. And of the Oregon Short Line Railroad?

A. Yes, sir.

Q. And of the Oregon Railway & Navigation Company?

A. Assistant secretary of that.

Q. And of the Southern Pacific Company?

A. Yes, sir.

Q. You have the minutes of the meetings of all those companies?

A. Yes, sir.

Q. Are you also an officer of the steamship lines belonging to the Union Pacific, the Short Line, or the Navigation Company?

A. The Oregon Railroad & Navigation Company is the owner of steamships; the other companies do not, so far as I know, operate steamships.

Q. The Oregon Navigation Company is the owner of steamships?

A. Yes, sir. But no separate company.

5 Q. Does the Union Pacific own any steamship lines?

A. No, not to my knowledge.

Q. Does it own any stock in any steamship line?

A. Not to my knowledge, no, sir; except so far as the Navigation Company is a steamship company.

Q. Isn't it a stockholder in the Occidental & Oriental Steamship Company?

A. Yes, sir; it is.

Q. From what ports do the steamers of the Navigation Company run?

A. From Portland, Oregon, to points on the Columbia and the Willamette Rivers, and also to San Francisco. The San Francisco and Portland Steamship Company go to San Francisco as successor to the Oregon Railway & Navigation Company.

Q. Does the Navigation Company have steamers engaged in eastern trade with China and Japan?

A. Not to my knowledge.

Q. Does the Navigation Company have any stock in any company engaged in traffic between this country and the Orient?

A. Not to my knowledge.

Q. Where do the steamers of the Occidental & Oriental Steamship Company ply?

A. I cannot tell you that.

Q. Do you know whether the Union Pacific Company controls that company by stock ownership?

A. It is a joint ownership, so far as I know.

Q. Equal ownership?

A. Equal with what? I don't get the idea.

Q. With any other company.

A. I think in the minority holders there are individuals as well as corporations owning the stock.

6 Q. What corporations own stock in the Occidental & Oriental Steamship Line?

A. I can only talk from a general impression. I think the Southern Pacific is a part owner.

Q. You are also the secretary of the Southern Pacific, you say?

A. Yes, sir.

Q. And of many of its subsidiary corporations?

A. A very few; very few.

Q. The Southern Pacific owns and controls a line of railway extending from Portland, Oregon, through San Francisco, California, Arizona, New Mexico, Texas, and Louisiana to New Orleans, does it not?

A. I understand it to be a leasing and owning company of the corporations that do operate between those points. It owns through stock ownership the companies operating the railroads between those points. The Southern Pacific Company is a stock owner and lessee of the lines operating between the points named.

Q. And controls them?

A. I should think possibly.

Q. And you are the secretary of the Southern Pacific Company of Kentucky?

A. Yes, sir.

Q. Where is the general office of the Southern Pacific Company; I mean its corporate office, under the laws of Kentucky?

A. We have an office in Beechmont, Kentucky, and also in New York; the general offices are in San Francisco and Oakland at the present time.

Q. Under your articles of incorporation, they provide for a general office in Kentucky, do they not?

A. Beechmont, Kentucky.

Q. Where is Beechmont?

A. In the suburbs of Louisville.

7 Q. That is your corporate headquarters under the laws of Kentucky?

A. I so understand, yes, sir.

Q. Are you an officer of the Morgan's Louisiana & Texas Railroad & Steamship Company?

A. M. B. Bergeron is secretary of the company and I am assistant secretary.

Q. Where is the principal office of that company?

A. In New Orleans.

Q. The Southern Pacific Company owns all the stock of that company, does it not?

A. I am not able to testify to that. I don't know the facts.

Q. It votes it, does it not, at meetings?

A. It votes the stock it owns, but what proportion I am unable to tell.

Q. It votes the control, does it not, Mr. Millar?

A. I think substantially, yes.

Q. And it owns a line of steamships, you know, in a general way, running in connection with the Southern Pacific system from New Orleans to New York?

A. Yes, sir. The Southern Pacific does not connect at New Orleans with the steamship line.

Q. Where does it connect?

A. The Southern Pacific Company as an operating company connects at El Paso.

Q. The Southern Pacific company owns the stock of and controls the line of railway clear from Portland to New Orleans, does it not?

A. Yes, sir; by stock control and lease.

Q. And speaking of the companies which own the physical property from El Paso to New York as belonging to the Southern
8 Pacific Company by stock ownership, the steamships connect with the Southern Pacific system at New Orleans, don't they?

A. Well, in a loose way of talking, yes. Not as I look at it.

Q. State why.

A. Because the Southern Pacific Company has no line in Texas or Louisiana.

Q. What company owns the lines through Texas and Louisiana?

A. Beginning at New Orleans, the Morgan's Louisiana & Texas Line goes to the Sabine River.

Q. Goes from New Orleans to the Sabine River?

A. In connection with one other company, the Louisiana Railroad Company.

Q. Who owns the stock of these companies? Does the Southern Pacific Company?

A. I think so.

Q. The steamship line connects with that railway at New Orleans, doesn't it?

A. Yes, sir.

Q. So that, by steamship and rail, the Southern Pacific Company controls lines of transportation from Portland, Oregon, through San Francisco, California, New Mexico, Arizona, Texas, Louisiana, and New York City?

A. Yes.

Q. And the Southern Pacific also owns the stock of and controls and operates by lease the Central Pacific Railway, does it not?

A. Yes, sir.

Q. Which line extends from San Francisco to Ogden?

A. Yes, sir.

Q. And the Union Pacific owns the line of railway from Council Bluffs and from Kansas City to Denver and to Ogden and Salt Lake?

A. Yes, sir, that is the Union Pacific Railroad Company.

Company, and the Oregon Railroad & Navigation Company during the years stated, this exhibit being Millar's Exhibits 1 and 2 in the record of the hearing before the Interstate Commerce Commission.

Complainant's Exhibit 1 (Millar) is as follows:

12 COMPLAINANT'S EXHIBIT 1. (Millar.)

UNION PACIFIC RAILROAD CO.—BOARD AND EXECUTIVE COMMITTEE.

Directors Elected October 10, 1899.

Oliver Ames, Horace G. Burt, George Q. Cannon, T. Jefferson Coolidge, jr., John W. Doane, Louis Fitzgerald, George J. Gould, E. H. Harriman, Marvin Hughitt, James H. Hyde, Otto H. Kahn, Roswell Miller, Winslow S. Pierce, Jacob H. Schiff, James Stillman.

Executive Committee Elected November 15, 1899.

E. H. Harriman, Chairman, George J. Gould, Marvin Hughitt, Otto H. Kahn, Winslow S. Pierce, James Stillman.

Directors Elected October 9, 1900.

Oliver Ames, Horace G. Burt, George Q. Cannon, T. Jefferson Coolidge, jr., John W. Doane, Louis Fitzgerald, George J. Gould, E. H. Harriman, Marvin Hughitt, James H. Hyde, Otto H. Kahn, Roswell Miller, Winslow S. Pierce, Jacob H. Schiff, James Stillman.

May 8, 1901, Mr. Miller resigned and Thomas T. Eckert was elected; and Frederick P. Voorhees and Alvin W. Krech were elected to succeed Messrs. Doane and Cannon, who had died.

13 Executive Commitee Elected November 8, 1900.

E. H. Harriman, Chairman, George J. Gould, Marvin Hughitt, Otto H. Kahn, Winslow S. Pierce, James Stillman.

Directors Elected October 8, 1901.

Oliver Ames, Horace G. Burt, T. Jefferson Coolidge, jr., Thomas T. Eckert, Louis Fitzgerald, George J. Gould, E. H. Harriman, Marvin Hughitt, James H. Hyde, Otto H. Kahn, Charles A. Peabody, Winslow S. Pierce, Henry H. Rogers, Jacob H. Schiff, James Stillman.

Executive Committee Elected October 16, 1901.

E. H. Harriman, Chairman, George J. Gould, Marvin Hughitt, Otto H. Kahn, Winslow S. Pierce, James Stillman.

Directors Elected October 14, 1902.

Oliver Ames, Horace G. Burt, T. Jefferson Coolidge, jr., Thomas T. Eckert, Louis Fitzgerald, George J. Gould, E. H. Harriman, Marvin Hughitt, James H. Hyde, Otto H. Kahn, Charles A. Peabody, Winslow S. Pierce, Henry H. Rogers, Jacob H. Schiff, James Stillman.

Executive Committee Elected October 30, 1902.

E. H. Harriman, Chairman, George J. Gould, Marvin Hughitt, Otto H. Kahn, Winslow S. Pierce, James Stillman.

14 Directors Elected October 13, 1903.

Oliver Ames, Horace G. Burt, Thomas T. Eckert, Louis Fitzgerald, George J. Gould, E. H. Harriman, Marvin Hughitt, James H. Hyde, Otto H. Kahn, Charles A. Peabody, Winslow S. Pierce, Henry H. Rogers, Jacob H. Schiff, Joseph F. Smith, James Stillman.

Executive Committee Elected November 12, 1903.

E. H. Harriman, Chairman, George J. Gould, Marvin Hughitt, Otto H. Kahn, James Stillman.

Directors Elected October 11, 1904.

Oliver Ames, Thomas T. Eckert, Henry C. Frick, George J. Gould, E. H. Harriman, Marvin Hughitt, James H. Hyde, Otto H. Kahn, Charles A. Peabody, Winslow S. Pierce, William G. Rockefeller, Henry H. Rogers, Jacob H. Schiff, Joseph F. Smith, James Stillman.
June 20, 1905, Messrs. Gould and Pierce resigned, and R. S. Lovett and Wm. D. Cornish were elected.

Executive Committee Elected March 9, 1905.

E. H. Harriman, Chairman, George J. Gould, Marvin Hughitt, Otto H. Kahn, James Stillman.
June 20, 1905, Mr. Gould resigned and R. S. Lovett was elected.

15 Directors Elected October 10, 1905.

Oliver Ames, Wm. D. Cornish, Thomas T. Eckert, Henry C. Frick, E. H. Harriman, Marvin Hughitt, Otto H. Kahn, R. S. Lovett, Charles A. Peabody, Wm. G. Rockefeller, Henry H. Rogers, Jacob H. Schiff, Joseph F. Smith, James Stillman, P. A. Valentine.
April 10, 1906, Messrs. Eckert, Kahn and Schiff resigned, and A. J. Earling, Robert W. Goelet, and David Willcox were elected.

Oct. 23, 1902, Mr. Erdmann resigned and Mr. Speyer was re-elected.
(In consequence of an injunction there was no election of Directors in 1903)

Directors Elected April 6, 1904.

Wm. D. Cornish, Maxwell Evarts, George J. Gould, E. H. Harriman, Edwin Hawley, H. E. Huntington, James H. Hyde, Otto H. Kahn, D. O. Mills, Winslow S. Pierce, Jacob H. Schiff, James Speyer, James Stillman, Charles H. Tweed, A. K. Van Deventer.
June 9, 1904, Mr. Hawley resigned and Marvin Hughitt was elected.
Sept. 8, 1904, Mr. Schiff resigned and M. L. Schiff was elected.

20 Executive Committee Elected June 9, 1904.

George J. Gould, E. H. Harriman (Chairman), Jacob H. Schiff, James Stillman, Charles H. Tweed.
June 27, 1904, Mr. Harriman resigned and Wm. D. Cornish was elected.
Sept. 8, 1904, Mr. Cornish resigned and Mr. Harriman was re-elected; Mr. Schiff resigned and M. L. Schiff was elected.

Directors Elected April 5, 1905.

Wm. D. Cornish, George J. Gould, E. H. Harriman, Marvin Hughitt, H. E. Huntington, James H. Hyde, Otto H. Kahn, Clarence H. Mackay, D. O. Mills, Winslow S. Pierce, Jacob H. Schiff, James Speyer, James Stillman, Charles H. Tweed, David Willcox.
April 13, 1905, Mr. Schiff resigned and M. L. Schiff was elected.
June 20, 1905, Messrs. Gould and Pierce resigned, and Maxwell Evarts and R. S. Lovett were elected.

Executive Committee Elected April 13, 1905.

George J. Gould, E. H. Harriman (Chairman), M. L. Schiff, James Stillman, Charles H. Tweed.
June 20, 1905, Mr. Gould resigned and R. S. Lovett was elected.

21 Directors Elected April 4, 1906.

Wm. D. Cornish, Henry W. de Forest, Maxwell Evarts, Robert Goelet, E. H. Harriman, Marvin Hughitt, H. E. Huntington, R. S. Lovett, Clarence H. Mackay, D. O. Mills, Ogden Mills, James Stillman, W. V. S. Thorne, David Willcox, A. K. Van Deventer.

Executive Committee Elected April 10, 1906.

Henry W. de Forest, E. H. Harriman (Chairman), R. S. Lovett, James Stillman, David Willcox.
(No change to end of year)

OREGON SHORT LINE RAILROAD CO.—BOARD AND EXECUTIVE COMMITTEE.

Directors Elected October 11, 1899.

Oliver Ames, Francis S. Bangs, Horace G. Burt, Samuel Carr, T. Jefferson Coolidge, Jr., Wm. D. Cornish, W. E. Glyn, George J. Gould, E. H. Harriman, Thomas R. Jones, Otto H. Kahn, Gardiner M. Lane, James Loeb, Oliver W. Mink, Winslow S. Pierce.

Executive Committee Elected November 15, 1899.

Oliver Ames, Horace G. Burt, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, Winslow S. Pierce.

21-a Directors Elected October 10, 1900.

Oliver Ames, Francis S. Bangs, Horace G. Burt, Samuel Carr, T. Jefferson Coolidge, Jr., Wm. D. Cornish, W. E. Glyn, George J. Gould, E. H. Harriman, Thomas R. Jones, Otto H. Kahn, Gardiner M. Lane, James Loeb, Oliver W. Mink, Winslow S. Pierce.

Executive Committee Elected November 8, 1900.

Oliver Ames, Horace G. Burt, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, Winslow S. Pierce.

Directors Elected October 9, 1901.

Oliver Ames, Francis S. Bangs, Horace G. Burt, Samuel Carr, T. Jefferson Coolidge, Jr., Wm. D. Cornish, W. E. Glyn, Edwin Gould, George J. Gould, E. H. Harriman, Thomas R. Jones, Otto H. Kahn, Gardiner M. Lane, Oliver W. Mink, Winslow S. Pierce.

Executive Committee Elected October 15, 1901.

Oliver Ames, Horace G. Burt, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, Winslow S. Pierce.

Directors Elected October 8, 1902.

Oliver Ames, Francis S. Bangs, Horace G. Burt, Samuel Carr, T. Jefferson Coolidge, Jr., Wm. D. Cornish, W. E. Glyn, Edwin

21-b Gould, George J. Gould, E. H. Harriman, Otto H. Kahn, Gardiner M. Lane, W. S. McCornick, Oliver W. Mink, Winslow S. Pierce.

Executive Committee Elected October 30, 1902.

Oliver Ames, Horace G. Burt, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, Winslow S. Pierce.

Directors Elected October 14, 1903.

Oliver Ames, Horace G. Burt, Samuel Carr, Wm. D. Cornish, Edwin Gould, George J. Gould, E. H. Harriman, James H. Hyde, Otto H. Kahn, Gardiner M. Lane, W. S. McCornick, Oliver W. Mink, Winslow S. Pierce, W. V. S. Thorne, Paul M. Warburg.

Executive Committee Elected November 12, 1903.

Oliver Ames, Horace G. Burt, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, W. V. S. Thorne.

Directors Elected March 15, 1905.

Oliver Ames, Samuel Carr, Wm. D. Cornish, Edwin Gould, George J. Gould, E. H. Harriman, James H. Hyde, Otto H. Kahn, Gardiner M. Lane, R. S. Lovett, W. S. McCornick, Oliver W. Mink, Winslow S. Pierce, W. V. S. Thorne, Paul M. Warburg.

June 20, 1905, Messrs. George J. Gould and Pierce resigned, and Maxwell Evarts and Wm. Mahl were elected.

21-c Executive Committee Elected March 23, 1905.

Oliver Ames, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, R. S. Lovett, W. V. S. Thorne.

Directors Elected December 5, 1905.

Oliver Ames, Gordon M. Buck, Samuel Carr, Wm. D. Cornish, George E. Downs, Maxwell Evarts, E. H. Harriman, Otto H. Kahn, R. S. Lovett, Gardiner M. Lane, Oliver W. Mink, Wm. Mahl, W. S. McCornick, W. V. S. Thorne, Paul M. Warburg.

Jan. 9, 1906, Mr. Lane resigned, and on April 10 Messrs. Kahn and Warburg. There were elected on the latter date—L. H. Cornell, H. B. Taylor, and P. A. Valentine.

Executive Committee Elected December 14, 1905.

Oliver Ames, Wm. D. Cornish, E. H. Harriman (ex officio), Otto H. Kahn, R. S. Lovett, W. V. S. Thorne.

April 10, 1906, Mr. Kahn resigned and P. A. Valentine was elected.

Directors Elected October 10, 1906.

Oliver Ames, Gordon M. Buck, Samuel Carr, L. H. Cornell, Wm. D. Cornish, George E. Downs, Maxwell Evarts, E. H. Harriman, R. S. Lovett, W. S. McCornick, Wm. Mahl, Oliver W. Mink, H. B. Taylor, W. V. S. Thorne, P. A. Valentine.

21-d Executive Committee Elected October 25, 1906.

Oliver Ames, Wm. D. Cornish, E. H. Harriman (Chairman), R. S. Lovett, W. V. S. Thorne, P. A. Valentine.
(No change to end of year.)

OREGON RAILROAD & NAVIGATION CO.—BOARD AND EXECUTIVE COMMITTEE.

Directors Elected September 7, 1899.

W. B. Ayer, Wm. L. Bull, H. W. Cannon, H. W. Corbett, Wm. D. Cornish, W. W. Cotton, E. H. Harriman, W. M. Ladd, Wm. Mackintosh, A. L. Mills, A. H. Mohler, Miles C Moore, Winslow S. Pierce, Mortimer L. Schiff, H. W. Scott.
May 1, 1900, Mr. Mackintosh resigned.

Executive Committee Elected September 7, 1899.

Wm. L. Bull, H. W. Cannon, Wm. D. Cornish, E. H. Harriman (ex officio), Winslow S. Pierce, Mortimer L. Schiff.

Directors Elected September 6, 1900.

W. B. Ayer, E. S. Benson, Wm. L. Bull, H. W. Cannon, H. W. Corbett, Wm. D. Cornish, W. W. Cotton, E. H. Harriman, W. M. Ladd, A. L. Mills, A. L. Mohler, Miles C. Moore, Winslow S. Pierce, Mortimer L. Schiff, H. W. Scott.
21-e Feb. 25, 1901, Mr. Ayer resigned and Wm. Crooks was elected.

Executive Committee Elected September 6, 1902.

Wm. L. Bull, H. W. Cannon, Wm. D. Cornish, E. H. Harriman, Chairman, Otto H. Kahn, A. L. Mohler, Winslow S. Pierce.

Directors Elected September 29, 1903.

John C. Ainsworth, E. S. Benson, Wm. L. Bull, Wm. D. Cornish, W. W. Cotton, Wm. Crooks, E. H. Harriman, James H. Hyde, Otto H. Kahn, W. M. Ladd, A. L. Mills, A. L. Mohler, Miles C. Moore, Winslow S. Pierce, H. W. Scott.

Executive Committee Elected September 30, 1903.

Wm. L. Bull, Wm. D. Cornish, E. H. Harriman, Chairman, James H. Hyde, Otto H. Kahn, Winslow S. Pierce.

Directors Elected September 29, 1904.

John C. Ainsworth, Wm. L. Bull, E. E. Calvin, H. F. Conner, Wm. D. Cornish, W. W. Cotton, Wm. Crooks, E. H. Harriman, James H. Hyde, Otto H. Kahn, W. M. Ladd, A. L. Mills, Miles C. Moore, Winslow S. Pierce, H. W. Scott.

Oct. 13, 1904, Mr. Cornish resigned and J. G. Wilson was elected.

21f January 6, 1905, Mr. Wilson resigned and Mr. Cornish was reelected.

April 4, 1905, Mr. Calvin resigned and B. A. Worthington was elected.

July 5, 1905, Mr. Worthington resigned and J. P. O'Brien was elected.

Executive Committee Elected October 13, 1904.

Wm. L. Bull, E. H. Harriman, Chairman, James H. Hyde, Otto H. Kahn, Winslow S. Pierce.

Jan. 6, 1905, Wm. D. Cornish was elected.

Directors Elected September 25, 1905.

Wm. L. Bull, H. F. Conner, Wm. D. Cornish, W. W. Cotton, Wm. Crooks, Maxwell Evarts, E. H. Harriman, Otto H. Kahn, W. R. Litzenberg, R. S. Lovett, R. B. Miller, J. P. O'Brien, W. D. Skinner, H. J. Stirling, James G. Wilson.

March 22, 1906, Mr. Kahn resigned.

Executive Committee Elected September 27, 1905.

Wm. L. Bull, Wm. D. Cornish, Maxwell Evarts, E. H. Harriman, Chairman, Otto H. Kahn, R. S. Lovett.

21g Directors Elected September 6, 1906.

Wm. L. Bull, H. F. Conner, Wm. D. Cornish, W. W. Cotton, Wm. Crooks, Maxwell Evarts, E. H. Harriman, W. R. Litzenberg, R. S. Lovett, Wm. Mahl, R. B. Miller, J. P. O'Brien, W. D. Skinner, H. J. Stirling, J. G. Wilson.

March 13, 1907, Mr. Stirling resigned and R. Blaisdell was elected.

Executive Committee Elected September 6, 1906.

Wm. L. Bull, Wm. D. Cornish, Maxwell Evarts, E. H. Harriman, Chairman, R. S. Lovett, Wm. Mahl.

(No change to end of year.)

Q. Prior to the acquisition of Southern Pacific stock by the Union Pacific Company or the Short Line Company, there were no directors in the Southern Pacific Company who were common directors in the Union Pacific Company, were there?

A. I think not.

Q. That was acquired by the Union Pacific, or in its interest, in about March, 1901, was it not?

A. Yes, sir, in the spring of 1901.

Q. Since that time either the Union Pacific or the Short Line, or parties in their interest, have voted that stock at the meetings of the stockholders of the Southern Pacific Company, have they not? Either the companies or persons in their interest by proxy,
22 or persons holding the stock in their own names, for those companies?

A. I want to give you my best understanding of that. I put it this way, that such stock as has been owned by the Union Pacific or by the Oregon Short Line has been voted by them or in their interest.

Q. I show you a paper purporting to show the date of the annual meetings of the Southern Pacific Company, the number of shares of stock voted at those meetings, both common and preferred, the number of shares of each class of stock owned by the Union Pacific, or the Short Line Companies. Is that a correct statement?

A. Yes, sir: as shown by the books.

Paper marked Complainant's Exhibit 2 (Millar).

Mr. SEVERANCE. Complainant's Exhibit 2 was marked Exhibit 3 to Mr. Millar's testimony in the record of the hearing before the Interstate Commerce Commission, and I now offer the same in evidence.

Complainant's Exhibit 2 (Millar) is as follows:

23 COMPLAINANT'S EXHIBIT 2. (Millar.)

Southern Pacific Company.

Date of Meeting	Date of Closing of Books	Shares Outstanding		Owned by Holding Co.		
		Preferred	Common	Preferred	Common	
Apr. 4, 1900	Mar 15, 1900	.....	1,884,471	.....	.....	Stock voted in person: C. P. Huntington... 398,714 H. E. Huntington.. 15,000 N. T. Smith ..... 5 Isaac L. Requa..... 100 Stock voted by proxy... 1,445,974 Total 1,859,793
Jan. 18, 1901	Jan. 18, 1901	.....	1,978,080	.....	.....	Stock voted in person... 154,600 " " by proxy... 1,581,960 Total 1,736,560
Apr. 3, 1901	Mar. 16, 1901	.....	1,978,090	.....	.....	Stock voted in person: E. H. Harriman..... 750,000 Winslow S. Pierce... 200 Charles H. Tweed... 100 Stock voted by proxy... 991,729 Total 1,742,029
Apr. 9, 1902	Mar. 22, 1902	.....	1,978,492	.....	U. P. 750,000	Stock voted in person... 31,686 " " by proxy... 1,542,206 Total 1,573,892
Apr. 8, 1903	Apr. 3, 1903	.....	1,978,492	.....	OSL 900,000	Meeting Adjourned by Order of the Court. Minutes Do Not Show who Voted in Person. Stock voted by proxy (as per list)..... 1,433,554
Apr. 6, 1904	Mar. 18, 1904	.....	1,978,492	.....	OSL 900,000	Stock voted in person (names not given)..... 2,406 Stock voted by proxy (as per list)..... 1,640,760 Total 1,643,166

(Continued on next page.)

24 COMPLAINANT'S EXHIBIT 2—Cont'd.

Southern Pacific Company.

Date of Meeting	Date of Closing of Books	Shares Outstanding.		Owned by Holding Co.			
		Preferred	Common	Preferred	Common		
Jul. 20, 1904	Jul. 14, 1904	.....	1,978,492	.....	O S L 900,000	Stock voted in person (names not given).....	200
						Stock voted by proxy (as per list).....	1,520,769
						Total.....	1,520,969
Apr. 5, 1905	Mar. 15, 1905	395,594	1,978,492	O S L 180,080	O S L 900,000	Stock voted in person (names not given).....	200
						Stock voted by proxy (as per list).....	1,973,988
						Total.....	1,974,188
Apr. 4, 1906	Mar. 15, 1906	395,688	1,978,492	O S L 180,000	O S L 900,000	Stock voted in person (names not given).....	5
						Stock voted by proxy (as per list).....	2,027,902
						Total.....	2,027,907

25 Q. According to this statement, the Union Pacific owned 750,000 shares in 1902?

A. Yes, sir; March, 1902.

Q. At that meting?

A. Yes, sir.

Q. That stock had been acquired by March, 1901?

A. Yes, sir.

Q. And at the next meeting on April 3, 1903, 900,000 shares were owned by the Oregon Short Line?

Mr. MILBURN. This statement shows the figures given there, as voted by proxy and include the stock of the Southern Pacific Company owned by the Union Pacific or the Oregon Short Line. The record may so state.

Mr. KELLOGG. Yes.

Mr. SEVERANCE. This is admitted to be a correct transcript from the record?

Mr. MILBURN. Yes.

Q. Then, the statement shows that at every meeting since and including April 8, 1903, the Oregon Short Line, by proxy, or in person through its officers, voted the majority of the stock present at each meeting of the Southern Pacific Company. (Addressing Mr. Milburn.) Do you admit that, Mr. Milburn?

Mr. MILBURN. Yes, sir. Our admission is that, based on that paper (referring to Exhibit 2) the majority of the stock voted at the election.

Mr. KELLOGG. Yes. That is, the Union Pacific and Oregon Short Line voted at each meeting the majority of the stock which was voted at each of the Southern Pacific annual meetings for the election of directors?

Mr. MILBURN. That is right.

26 Q. I offered in evidence Exhibit No. 1, showing the common officers. I notice by that—I do not care to go into the details of it—that a majority—not the statement you have here, but my Exhibit No. 1, that a majority of the directors of the Southern Pacific Company for each year, except one, since the Union Pacific or the Oregon Short Line acquired the Southern Pacific stock, are also directors in the Union Pacific Company. Is that correct, as you understand it?

A. (After examination of Exhibit No. 1.) Yes, except as to 1906.

Q. In the list of directors of 1906, I notice R. W. Goelet and Robert Goelet. Are they the same person?

A. No, sir, they are not.

Q. Relatives?

A. I understand they are cousins.

Q. Have an office together, do you know?

A. I believe they do.

Q. I also notice that W. V. S. Thorne, who is a director of the Southern Pacific, is not a director of the Union Pacific. Is that correct? (Handing paper to witness.)

A. Yes, sir.

Q. Who is Mr. Thorne?

A. He is the director of purchases of all these four companies.

Q. And he is a director in the Southern Pacific, but not in the Union Pacific?

A. Yes, sir.

Q. A. K. Vandeventer is a director in the Southern Pacific in 1906, but not in the Union Pacific. Who is A. K. Vandeventer?

A. He is assistant treasurer of the Southern Pacific Company.

Q. Is he an officer of any of the other companies?

A. Of the three other companies, no, sir.

27 Q. Is he not assistant secretary of one of the companies?

A. Well, not to my recollection.

Q. Mr. Maxwell Evarts, I see, is a director in the Southern Pacific in 1906, but not in the Union Pacific Company. Officially, what position does Mr. Evarts hold in the Union Pacific?

A. Attorney.

Q. He is attorney for the Union Pacific?

A. Yes, sir.

Q. Now, the board of directors elected in October, 1906, of the Union Pacific Company is the same board elected in 1905 and which is shown on this list, is it?

A. Yes, sir.

Q. So we have the complete boards, if this is correct?

A. Yes, sir.

Q. From and including 1900 and down to the present time?

A. Yes, sir.

(A recess was here taken until 2 o'clock P. M.)

Q. I have identified the by-laws of the four Pacific companies, and I mean by that, the Union Pacific, the Short Line, the Navigation and the Southern Pacific companies, as Exhibits 4 to 10 inclusive.

(These exhibit numbers are as they appear in the Interstate Commerce Commission testimony.)

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 3 (Millar), being the by-laws of Union Pacific Railroad Company, in effect January 7, 1904;

Complainant's Exhibit 4 (Millar), being by-laws of Union Pacific Railroad Company, as amended October 4, 1906;

Complainant's Exhibit 5 (Millar), being by-laws of the Oregon Short Line Railroad Company, March, 1897;

28 Complainant's Exhibit 6 (Millar), being by-laws of Oregon Short Line Railroad Company, as amended October 10, 1906;

Complainant's Exhibit 7 (Millar), being by-laws of The Oregon Railroad & Navigation Company, as amended October 10, 1906;

Complainant's Exhibit 8 (Millar), being by-laws of the Southern Pacific Company;

Complainant's Exhibit 9 (Millar), being by-laws of the Southern Pacific Railroad Company, adopted March 24, 1902; amended January 6, 1904, March 2, 1905, and November 2, 1905.

Complainant's Exhibits 3 to 9 (Millar) inclusive are as follows:

COMPLAINANT'S EXHIBIT 3. (Millar.)

BY-LAWS OF UNION PACIFIC RAILROAD COMPANY.

(In Effect January 7, 1904.)

ARTICLE I.—*Meetings of stockholders.*

SECTION 1.—The annual meeting for the election of directors of the company and for the transaction of such other business as may legally come before it shall

29 be held on the second Tuesday of October in each year, beginning with the year 1898, at 12 o'clock, noon, at the office of the company in Salt Lake City, Utah, or at such other place in the State of Utah as shall be specified in the notice of the meeting. Fifteen directors shall be voted for by ballot by the shareholders in person or by proxy. In case it should happen at any time that an election of directors shall not be made on the day designated in this section, the directors shall designate a time as soon as is reasonably practicable and within one year for holding a meeting of the stockholders for the election of directors, and shall cause notice thereof and of the place where the same shall be held to be given in the manner hereinafter provided.

Annual meetings.

Fifteen directors.

Failure to elect.

Special meetings.

SEC. 2. Special meetings of the stockholders may be held at any time by order of the board of directors, or whenever any number of stockholders owning not less than one-third part of the capital stock shall in writing make application therefor to the president, stating the object of such meeting. The business of all such meetings shall be confined to the objects stated in the notice thereof. If at any such meeting so called a majority in value of the stockholders are not represented in person or by written proxy, said meeting shall be adjourned from day to day, not exceeding three days, without the transaction of any business; and if, within said three days, stockholders owning at least a majority in interest of the stock do not attend in person or by proxy and participate in such meeting, then the meeting shall be dissolved.

Adjournment.

Notice of meetings.

SEC. 3. Due notice of the time and place of holding any annual meeting, and any other meeting, of the stockholders, shall be published for not less than twenty days previous to such meeting by the secretary in some newspaper having a general circulation in the State of Utah, and once a week for four weeks in one daily newspaper published in the City of New York. The stock-transfer books shall be closed for at least ten days next preceding the date appointed for the holding of any annual or special meeting.

Closing books.

Voting.

SEC. 4. Each share of stock shall entitle the holder thereof to one vote in person or by proxy at any election of directors or meeting of stockholders, provided the stock owned by such holder shall have been registered in his name upon the books of the company for at least ten days prior to such election or meeting. The board of directors shall cause to be prepared an alphabetical list of the stockholders registered as such at the closing of the stock-transfer books, with the number of shares held by each, for the use of the inspectors at any meeting of the stockholders.

List of stockholders.

Inspectors.

SEC. 5. At each meeting of the stockholders the polls shall be opened and closed, the ballots and proxies shall be received and taken charge of, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided, by three inspectors of election. Such inspectors of election shall be appointed before the meeting by the board of directors or by the executive committee, and, if no such appointment shall have been made, then by the presiding officer at the meeting; and if for any reason any of the inspectors previously appointed

How appointed.

shall fail to attend, or refuse or be unable to serve, then inspectors, in place of any so failing to attend, or refusing or unable to serve, shall be appointed by the presiding officer at the meeting. Filling vacancies.

A meeting at which a quorum of stockholders is represented may adjourn from time to time until its business is completed. The time and place to which an adjournment is taken shall be publicly announced at the meeting, and no further notice shall be necessary for the holding of any adjourned meeting. Adjournment.

The polls for receiving ballots shall be opened as soon as the organization of the meeting shall admit, and shall be kept open for at least two hours under the supervision of the inspectors of election. As soon as may be after the polls are closed the inspectors shall examine and canvass the proxies and ballots, and make and sign a report to the meeting of the votes cast at the meeting, which shall be entered at large upon the records. Opening of polls. Inspectors' report.

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SEC. 6. The chairman of the executive committee and in his absence the president or vice-president shall call meetings of stockholders to order and act as chairman of such meetings. In the absence of all of these officers, the board of directors may appoint a chairman of the meeting to act in such event; but, if the board should not make such appointment, then, in the absence of all of these officers, any stockholder or proxy of any stockholder may call the meeting to order and a chairman shall be elected. Organization. Chairman and.

SEC. 7. The secretary of the company shall act as secretary at all meetings of the stockholders; but the board of directors or executive committee may designate an assistant secretary for that purpose before the meeting, and, if no such designation shall have been made, then such designation may be made by the presiding officer at the meeting. Secretary.

ARTICLE II.—*Directors.*

SECTION 1. The general management of the business and affairs of the corporation shall be vested in a board of fifteen directors, who shall be elected by the shareholders at their annual meetings. Management.

33

SEC. 2. Directors shall continue in office for one year and until their successors are elected and qualified by acceptance. Term.

SEC. 3. A majority of the board shall constitute a quorum at all meetings of the board. Quorum.

Vacancies. SEC. 4. Any vacancies in the board occurring between elections by the stockholders may be filled by the affirmative vote of a majority of the remaining directors.

Stated meetings. SEC. 5. Stated meetings of the board shall be held at such place and hour as shall from time to time be agreed upon by the board.

Special meetings. SEC. 6. Special meetings shall be called by the secretary at any time and place, at the request of the executive committee or of any five members of the board, and may be called by order of the president.

Notice of meetings. SEC. 7. The secretary shall mail or telegraph notice of the meeting to each director at least five days before such meeting.

Annual report. 34 SEC. 8. The board of directors shall make a report to the stockholders at each annual meeting.

Fees and expenses. SEC. 9. Each director shall be paid a fee of $10 for each meeting of the board which he shall attend, and each director shall receive such transportation and other expenses actually incurred to and from his place of residence to the meeting as the executive committee shall approve.

ARTICLE III.—*Executive Committee.*

Appointment. SECTION 1. There shall be an executive committee, to consist of five members of the board, who shall be elected by vote of a majority of the whole board, and the general counsel, who shall be *ex officio* a member of the committee. One member of the committee shall be elected its chairman by the board. Such committee shall be chosen annually at the first meeting of the board of directors after the annual election, or as soon thereafter as possible, and shall, when the board is not in session, have all the powers of the board to manage and direct all the business and affairs of the company in such manner as said committee shall deem best for its interests in all cases in which specific directions shall not have been given by the board.

Subcommittees. SEC. 2. The executive committee may appoint 35 such subordinate committees as it shall deem necessary, and shall keep a full and accurate record of all its acts and proceedings, and report the same from time to time to the board.

Meetings. SEC. 3. Regular meetings of the executive committee shall be held weekly on days to be fixed by vote of a majority of the executive committee, and special meetings of said committee may be called at any time by its chairman, and shall be called at the request of any three mem-

Calling.

bers of the committee. Notice of each meeting shall be sent by mail or by telegraph to the members of the committee, not less than three days before the meeting. Notice.

SEC. 4. Three members of the committee shall constitute a quorum for the transaction of business, and the affirmative vote of three members shall be required for any action by the committee. Quorum.

SEC. 5. Each member of the executive committee shall be paid a fee of $10 for each meeting of the committee which he shall attend, in addition to transportation and other expenses actually incurred to and from his place of residence to the meeting. Fees and expenses.

SEC. 6. Any vacancy in the committee shall be filled by the board of directors. Vacancies.

36 ARTICLE IV.—*Chairman of the executive committee.*

SECTION 1. The chairman of the executive committee shall preside at its meetings, and, subject to the control and approval of the committee, shall represent it when not in session, and shall report to the committee. Powers and duties.

ARTICLE V.—*Officers and agents.*

SECTION 1. The directors shall as soon as practicable after their election meet and organize by electing the executive committee, the chairman thereof, and the president of the company, who shall be a member of the board. Executive committee, its chairman, and the president.

SEC. 2. The board may, in its discretion, appoint one or more vice-presidents, to whom may be assigned the supervision of any branch of the company's service. Vice-presidents.

SEC. 3. The board shall appoint a secretary, a treasurer, a general counsel, a general solicitor, and a general auditor. Other officers.

SEC. 4. The board may also appoint one or more assistant secretaries and assistant treasurers, and such
37 other additional officers or assistant officers, and such committees, as the board may deem advisable. Assistants.

SEC. 5. Any two offices may be filled by the same person except as respects the offices of treasurer and general auditor. Joint offices.

SEC. 6. The powers, duties, and responsibilities of the officers and employees of the company not prescribed in these by-laws shall be defined in rules or regulations which may be adopted and from time to time modified or changed by the board of directors. Additional powers to be defined in rules.

SEC. 7. In case a vacancy shall have occurred in the office of chairman of the executive committee, or of president, the board of directors shall fill the same as early as practicable. Vacancies filled by board.

Vacancies filled otherwise.

SEC. 8. In case of any vacancy in the office of vice-president, secretary, assistant secretary, treasurer, assistant treasurer, general counsel, general solicitor, or general auditor, the chairman of the executive committee—or, in case of his absence or temporary incapacity, the president—may make an appointment *pro tem.* to fill the vacancy temporarily; or, in case of temporary incapacity or absence of any such officer, the chairman of the executive committee—or, in case of his absence or temporary incapacity, the president—may make an appointment *pro tem.* to act in place of any such officer or appointee so temporarily incapacitated or absent; but such appointment shall be subject to change by the board of directors at any regular or special meeting thereof.

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Removals.

SEC. 9. All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of all the members of the board, and all officers and employees not appointed by the board shall hold their offices at the discretion of the officer appointing them.

ARTICLE VI.—*President.*

Powers and duties.

SECTION 1. The president shall have general care, supervision and control of the company's business, in all its departments, under control of the board of directors and executive committee. The offices of president and chairman of the executive committee may be held by the same person.

Appointments.

SEC. 2. The president may appoint such additional officers and may employ such persons as he shall deem necessary for the proper management of the business and property of the company.

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ARTICLE VII.—*Vice-President.*

Powers and duties.

SECTION 1. The vice-president shall have such powers and perform such duties as shall from time to time be conferred and prescribed by the board of directors or executive committee. He shall report to the board and executive committee.

ARTICLE VIII.—*Secretary.*

Duties.

SECTION 1. The secretary shall attend all meetings of the stockholders, the board of directors, and the executive committee, and record their proceedings, unless a temporary secretary be appointed.

Notice of meetings.

SEC. 2. He shall give due notice of all meetings of the stockholders, directors, and executive committee.

Custody of seal, etc.

SEC. 3. He shall be the custodian of the seal of the company and of its records, and of such papers and documents as may be committed to his care by the board or the executive committee. He shall have power to affix the seal of the company to instruments to which the same is authorized by the board or executive committee to be affixed, and to attest the same, and shall perform such other duties as may be assigned to him by the board or the executive committee, or as may be prescribed in the rules to be adopted by the board.

Accounts of company in New York.

SEC. 4. He shall have charge of the general books and accounts of the company kept in New York, which shall show, from time to time, the condition of the financial affairs of the company. He shall make such reports and statements of the company's affairs as may be directed by the board, executive committee, the president, or the vice-president. Reports shall be made to him by such officers and at such times as he may deem necessary, showing all receipts and disbursements for the company's account, and copies of such contracts as may be required in the company's office in New York shall be furnished for his files.

Reports on receipts, etc.

Custody of vouchers, etc.

SEC. 5. He shall have the custody of all vouchers for payments made at the company's Eastern office, including coupons, bonds, and other evidences of indebtedness, which shall be duly canceled by him or under his direction. He shall, under direction of the executive committee, prepare and approve for payment all vouchers for disbursement of the company's funds in New York, and no such payments shall be made without such approval, unless otherwise specifically authorized by the directors or the executive committee, and shall perform such other duties as the board of directors or the executive committee may prescribe.

Approval of vouchers.

Duties of assistant secretary.

SEC. 6. The assistant secretary or secretaries shall perform such duties as may be assigned to him or them by the board or by the executive committee, or as may be prescribed in the rules to be adopted by the board; and, when specially authorized by the board or executive committee, shall have power to affix the corporate seal to the negotiable bonds of the company, and to attest the same, and to sign the certificates of stock of the company.

ARTICLE IX.—*Treasurer.*

Duties

SECTION 1. The treasurer, either in person or through competent and faithful assistants, shall receive, keep, and

disburse all moneys belonging to or coming to the company; shall keep regular, true and full accounts of all receipts and disbursements, and make detailed reports of the same to the board of directors or the executive committee at their regular meetings and at all other times when required.

Reports.

Other duties.

SEC. 2. The treasurer shall perform such other duties in connection with the administration of the financial affairs of the company as the board, executive committee, or president shall assign to him or as may be prescribed in the rules to be adopted by the board, and shall give bond in such amount as shall be required by the board.

42

ARTICLE X.—*General counsel.*

Duties.

SECTION 1. The general counsel shall be the consulting officer of the company in all legal matters, and, subject to the control of the board and executive committee, shall have general supervision of the legal department and of all the legal business of the company.

ARTICLE XI.—*General solicitor.*

Duties.

SECTION 1. The general solicitor shall have charge of all the litigation of the company, and shall keep himself advised of the character and progress of all legal proceedings and claims by and against the company or in which it is interested.

SEC. 2. He shall, whenever requested so to do, give to any officer of the corporation his opinion upon any question affecting the interests of the company, and shall, when requested by the chairman of the executive committee, the president, a vice-president, the general counsel, or by the board or the executive committee, give opinions in writing on any subjects that may be referred to him.

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Authority to execute bonds, etc.

SEC. 3. He shall have power and authority to execute in the name of the corporation any and all bonds or stipulations for costs, or to operate as a supersedas, or for other purposes connected with legal proceedings and necessary for the protection of the rights and interests of the corporation, with respect to such proceedings, in any of the courts of justice.

Approval of contracts.

SEC. 4. All contracts of the company, where they have not been passed upon by the general counsel, shall be submitted to the general solicitor for his approval as to form.

ARTICLE XII.—*General auditor.*

SECTION 1. The general auditor shall have charge of the accounting department at Omaha, and shall have the supervision and management of all the passenger, freight, disbursement, and land accounts of the company, and shall prescribe, enforce, and maintain the systems and the books, blanks, etc., for keeping the same, in which he shall have the co-operation of all departments. He shall keep regular sets of books, showing a complete record of the general business transactions of the company, and for that purpose shall receive from the local treasurer and agents of the company such daily or other reports of receipts and disbursements as he may deem necessary. Duties. Reports from agents, etc.

SEC. 2. He shall have the custody of all written contracts for construction, equipment, repairs and supplies, or for other purposes made by any officer or agent of the company with individuals, corporations, and connecting or competing companies. Custody of contracts.

SEC. 3. He shall render to the secretary in New York such statements of the affairs of the company, shown by his books and records, as may be required for the information of the board and executive committee, and shall by proper distribution and classification of the accounts under his charge be prepared to furnish such reports as may be required by the board of directors, the executive committee, the proper officers of the states in which the company's property is located, and the proper officers of the United States. Statements for Eastern office.

SEC. 4. He shall be assisted by an auditor of freight accounts, auditor of passenger accounts, and an auditor of disbursements, and such other assistants as the necessities of his department may require. Assistants.

ARTICLE XIII.—*Salaries and appointments.*

SECTION 1. The salaries of officers elected or appointed by the board of directors or executive committee shall be fixed by the board or the executive committee. The appointment of all other officers shall be made and the salaries be fixed by the president or by the heads of departments, subject to the approval of the president; and the compensation of all officers shall be subject to the control of the board of directors or the executive committee. How fixed. Compensation.

SEC. 2. No special compensation shall be paid to any officer or employee unless authorized by the board or Special compensation.

executive committee nor unless such special compensation be entered on the pay rolls.

Approval of salaries.

SEC. 3. No salary in excess of $3,500 shall be established except with the approval of the board or the executive committee.

ARTICLE XIV.—*Regulations relating to the execution and cancellation of negotiable bonds.*

Authority to sign bonds.

SECTION 1. No negotiable or mortgage bonds shall be signed by any officer of the company until an issue of the same has been authorized by the board of directors, and then only for the amount authorized.

Countersignature of trustee and officers.

46 SEC. 2. All such bonds shall require the countersignature of a trustee, and shall, until otherwise provided by the board of directors, be signed by the president or a vice-president, and by the secretary or an assistant secretary thereunto authorized by resolution of the board or of the executive committee.

Cancellation.

SEC. 3. No bonds shall be cancelled or destroyed except by order of the directors, except bonds certified and issued, pursuant to a deed of trust, in exchange for a like amount of registered bonds.

Cancellation—how attested.

SEC. 4. The destruction or cancellation of bonds, except such as are excepted in section 3, shall be attested from personal knowledge by the chairman of the executive committee, the treasurer or assistant-treasurer, or the secretary, and also by the trustees, in case there should be such.

ARTICLE XV.—*Regulations relating to the issue and cancellation of stock certificates.*

Issue, etc., provided for.

SECTION 1. The board of directors shall provide for the issue, transfer, and registration of the capital stock of the company in the City of New York. The board

47 may also make arrangements for the transfer and registration of the capital stock of the company in other cities, and may appoint the necessary officers, transfer agents, and registrars of transfers for that purpose.

Certificates—how signed.

SEC. 2. Until otherwise provided by the board of directors, stock certificates shall be signed by the president, or by such officer or officers for the president as may be designated by the board or executive committee, and also be signed by the secretary or an assistant secretary designated for that purpose by the board of directors or by the executive committee.

Vice-presidents may be appointed to sign.

SEC. 3. For the purpose of facilitating the execution of stock certificates of the company, the board of directors or the executive committee may appoint one or more officers,

who need not be members of the board of directors, each bearing the title "Vice-President," and having power to sign stock certificates.

Rules of issue.

SEC. 4. No new certificates shall be issued to a transferee except upon surrender and cancellation of the old certificate.

Registrar.

SEC. 5. The registrar of transfers shall in every case be a bank or trust company, to be appointed by the board of directors, in accordance with the requirements of the New York Stock Exchange, and such registration
48 shall be performed in accordance with the rules and regulations of said exchange.

Closing and opening of books.

SEC. 6. The stock-transfer books shall be closed and remain closed, and no transfer of stock shall be made, during a period to be fixed by the board of directors or executive committee preceding the day appointed for any annual or special meeting of the stockholders or for the payment of a dividend, provided that such period shall include at least ten days prior to such meeting or date for payment of such dividend, and the said books shall be reopened within ten days after the close of such meeting or after the date for the payment of such dividend.

List of stockholders.

SEC. 7. The secretary or agents in charge of transfer books shall prepare for presentation at all annual or special meetings a certified list of stockholders entitled to vote at such meetings, and shall make such reports as the board or executive committee may direct.

ARTICLE XVI.—*Payments, advances, etc.*

Approved vouchers required.

SECTION 1. All payments of money, except for bond interest, coupons, bills payable, dividends, transportation balances due other railroad companies, and such other expenditures as the board or executive committee shall designate, shall be made only upon properly
49 authorized and approved vouchers and payrolls, and no liability for acquisition of property, except supplies, or for construction or new work, shall be incurred without the approval of the board or of the executive committee.

ARTICLE XVII.—*Seal.*

Description of.

SECTION 1. The common corporate seal is, and, until otherwise ordered by the board of directors, shall be, an impression upon paper or wax, circular in form, with the words, "Union Pacific Railroad Company" and "Utah" on the outer edge thereof, and the device of a shield with

a diagonal space across the face of the shield, in which shall be the figures "1897."

Duplicates of. SEC. 2. The board of directors may cause duplicate stamps suitable to make an impression of such corporate seal to be prepared; and, when and as directed by the board of directors or the executive committee, the secretary or assistant secretary, or such officer as shall be designated by the board, may and shall use one or the other of such duplicate stamps for the purpose of impressing the corporate seal upon the deeds, indentures, or other obligations or instruments to be executed by the company under seal.

50 ARTICLE XVIII.—*Fiscal year.*

Ends June 30. SECTION 1. The fiscal year of the company shall commence on the first day of July of each year and end on the following thirtieth day of June.

ARTICLE XIX.—*Amendments.*

By-laws—how amended. SECTION 1. These by-laws may be altered, amended, or repealed, and additional or new by-laws adopted, by the board of directors, provided that any such alteration or amendment or any additional or new by-laws adopted shall not be inconsistent with the provisions of the Articles of Association of this company and with the constitution and laws of the State of Utah and of the United States, provided however that no such amendment or repeal shall be made or new by-laws adopted except at a meeting of the board held for that purpose, of which thirty days' notice shall be given.

51 COMPLAINANT'S EXHIBIT 4. (Millar.)

BY-LAWS OF UNION PACIFIC RAILROAD COMPANY, AS AMENDED OCTOBER 4, 1906.

SECTION 1. There shall be an annual meeting of the stockholders of this Company for the purpose of electing directors and transacting any other business at the office of the Company in Salt Lake City, Utah, or at such other place in the State of Utah, as shall be specified in the notice of the meeting, at twelve o'clock M., on the second Tuesday of October in each year. The Secretary shall give at least three weeks' notice of the time and place of holding such annual meeting by advertisement in some daily newspaper published and having a general circulation in the State of Utah, and one daily newspaper published in the City and State of New York.

SECTION 2. Special meetings of the stockholders may be held at any time upon order of the Board of Directors, or Executive Committee, or whenever any number of stockholders owning not less than one-third in amount of the capital stock of the Company shall in writing make application therefor to the president, specifying the object of such meeting. The business of all such meetings shall be confined to the objects stated in the notice thereof. The Secretary shall
52 give at least three weeks' notice of the object, time and place of holding any such special meeting by advertisement in some daily newspaper published and having a general circulation in the State of Utah, and one daily newspaper published in the City and State of New York.

SECTION 3. The stock transfer books of the Company shall be closed for such time not less than ten days preceding the date appointed for the holding of any annual or special meeting of the stockholders, as the Board of Directors or Executive Committee shall specify. The Secretary shall cause to be prepared an alphabetical list of the stockholders registered as such at the closing of the stock transfer books, with the number of shares held by each, for the use of Inspectors and of stockholders at any meeting of the stockholders. Each share of stock shall entitle the holder thereof to one vote in person or by proxy, in writing, at any meeting of stockholders, provided such stock shall have been registered in the name of such holder upon the books of the Company prior to the closing of the transfer books for the purpose of such meeting.

SECTION 4. The President, and in his absence one of the Vice-Presidents, shall call meetings of stockholders to order and act as chairman of such meetings. In the absence of all of these officers, the Board of Directors may appoint a chairman of the meeting to act in such event; but if the Board should not make such appointment, then, in the absence of all of these officers, any stockholder or proxy of any
53 stockholder may call the meeting to order and a chairman shall be elected.

SECTION 5. The Secretary of the Company shall act as Secretary at all meetings of the stockholders; but the Board of Directors or Executive Committee may designate an Assistant Secretary for that purpose before the meeting, and, if no such designation shall have been made, then such designation may be made by the presiding officer at the meeting.

SECTION 6. At each meeting of the stockholders the polls shall be opened and closed, the ballots and proxies shall be received and taken charge of, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided, by three Inspectors. Such Inspectors shall be appointed before the meeting by the Board of Directors or by the Executive Committee, and, if no such appointment shall have been made, then by the presiding officer at the meeting; and if for any reason any of the Inspectors previously appointed shall fail to attend, or refuse or be unable to serve, then Inspectors, in place of any so failing to attend

or refusing or unable to serve, shall be appointed by the presiding officer at the meeting. Such Inspectors need not be stockholders.

SECTION 7. If at any meeting of the stockholders, the holders of a majority in amount of the stock outstanding are not represented in person or by written proxy, the said meetings shall be adjourned by the stockholders present, or by the Secretary or an Assistant
54 Secretary of the Company, from day to day not exceeding ten days, without the transaction of any business; and if within said ten days, the holders of at least a majority in amount of said stock do not attend in person or by written proxy and participate in such meeting, then the meeting shall be dissolved. A meeting at which the holders of a majority in amount of the outstanding stock of the Company shall be present in person or represented by proxy may be adjourned to any day and from time to time as such meeting shall determine. The time and place to which an adjournment is taken shall be publicly announced at the meeting, and no further notice thereof shall be necessary.

SECTION 8. There shall be fifteen Directors of said Company, who shall hold their office until the next annual meeting of the Company, and until others are duly chosen in their place and shall have qualified. Any vacancy occurring in the office of Director shall be filled for the unexpired term by vote of a majority of the remaining Directors.

SECTION. 9. Regular meetings of the Board of Directors shall be held at such times and at such places in the City and State of New York or elsewhere as the Board of Directors may from time to time prescribe. Special meetings may at any time be called by the Chairman of the Executive Committee or any three members of the Board, to convene at such time and place as may be appointed. A majority of the Directors shall constitute a quorum at all meetings for the transaction of business. If a quorum be not present at any meeting, a majority of the Directors present may adjourn the meeting
55 until a later day or hour, and a minute of such adjournment shall be entered on the records by the Secretary, and no further notice of such adjournment shall be required.

SECTION 10. The Board of Directors shall elect one of their number to be a President, and shall appoint such Vice-Presidents as the Board may from time to time determine. It shall also appoint a Secretary, a Treasurer, and such Assistant Secretaries, Assistant Treasurers, and such other officers and agents as the Board may from time to time determine.

SECTION 11. The President, Vice-Presidents, Secretary, Treasurer, Assistant Secretaries, Assistant Treasurers, and the other officers appointed by the Board, shall perform such duties and possess such authority as from time to time shall be conferred and prescribed by the Board of Directors or Executive Committee.

SECTION 12. The Directors shall elect from their number an Executive Committee of five members. Such Committee shall hold office until the next annual election of Directors, and shall, when the

Board of Directors is not in session, have all the powers of the Board of Directors to manage and direct all the business and affairs of the Company in such manner as said Committee shall deem best for the Company's interests in all cases in which specific directions shall not have been given by the Board of Directors. The Chairman of the Executive Committee shall be elected by the Board of Directors, and, subject to the control and approval of the Executive Committee, shall represent it when not in session. He shall, from time to time, report to the Executive Committee. Any vacancy which may occur in said Committee shall be filled by the Board of Directors. Regular meetings of said Executive Committee shall be held at such times and at such places in the City and State of New York or elsewhere as the Committee shall from time to time determine. Special meetings may be called at any time by the Chairman or any three members of the Committee, to convene at such time and place as may be appointed. Three members of the Committee shall constitute a quorum. If a quorum be not present at any meeting, a majority of the members of the Committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the Secretary, and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not, at their option, shall have the power to appoint a substitute or substitutes from the members of the Board of Directors to act during the temporary absence of any member or members of the Committee.

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SECTION 13. The shares of stock of this Company shall be transferable on the books of the Company, kept for the purpose by such officer as the Board of Directors or the Executive Committee shall from time to time designate. Transfers may be made by any stockholder, or his attorney, duly authorized in writing. It shall be the duty of the designated officer to keep such transfer books, and also a stock ledger and certificate book, and prepare new certificates upon the transfer of shares and surrender of old certificates, and to keep a register of old certificates returned, and of all certificates issued.

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SECTION 14. The common corporate seal is, and until otherwise ordered by the Board of Directors, shall be, an impression upon paper or wax, circular in form, with the words, "Union Pacific Railroad Company" and "Utah" on the outer edge thereof, and the device of a shield with a diagonal space across the face of the shield, in which shall be the figures "1897."

SECTION 15. These by-laws may be altered, amended or repealed at a general meeting of the stockholders by a majority vote of those present in person or by proxy, or at any meeting of the Directors by a majority vote of all the members of the Board.

58 COMPLAINANT'S EXHIBIT 5. (Millar.)

BY-LAWS OF THE OREGON SHORT LINE RAILROAD COMPANY, MARCH, 1897.

ARTICLE I.—*Annual meeting.*

SECTION 1. The annual meeting for the election of Directors of the Company, and for the transaction of such other business as may legally come before it, shall be held on the second Wednesday of October, 1898, and thereafter on the second Wednesday of October in each year, at 10 o'clock A. M., at the office of the Company in Salt Lake City, Utah, or at such other time and place in said city as shall be duly notified in the manner provided in Section 2 of this Article. The stock transfer books shall be closed for ten days next preceding the date appointed for holding said election. Fifteen Directors shall be voted for by ballot by the shareholders in person or by proxy. Each share of stock shall entitle the owner to one vote.

SECT. 2. Due notice of the time and place of holding such election shall be published for not less than twenty days previous to the meeting by the Secretary in some newspaper having a general circulation in the State of Utah, and once a week for four weeks in one daily newspaper published in Boston and New York. The Board of
59 Directors shall cause to be prepared an alphabetical list of the Stockholders, registered as such at the closing of the Stock Transfer Books, with the number of shares held by each, for the use of the inspectors on the day of election.

SECT. 3. The polls shall be opened by the inspectors at the time and place appointed, and kept open for at least one hour. The inspectors of election shall be judges of the qualifications of voters, and shall proceed to canvass the votes as soon as the polls are closed, and shall sign and deliver to the Secretary or some other officer a certificate of the result of the election.

ARTICLE II.—*Special meeting of stockholders.*

SECTION 1. Special meetings of Stockholders may be held at any time by order of the Board of Directors, or whenever any number of Stockholders owning not less than one-third part of the capital stock shall in writing make application therefor to the President, stating the object of such meeting.

SECT. 2. Thirty days' public notice of the time and place of such special meetings shall be given by publication in the same manner as notices for annual meetings, and shall state the object of such meetings.

SECT. 3. The business of all such meetings shall be confined to the objects stated in such notices.

60 SECT. 4. No Stockholder shall be entitled to vote at any election of Directors, or meeting of Stockholders, unless the stock owned by him shall have been registered in his name upon the books of the Company for at least ten days prior to such election.

ARTICLE III.—*Meetings of the board of directors.*

SECTION 1. Stated meetings of the Board shall be held at such place and hour as shall from time to time be agreed upon by the Board.

SECT. 2. Special meetings shall be called by the Secretary, when ordered by the President, or on the written request of five or more Directors.

SECT. 3. At the first meeting of the Directors after an election, or as soon as a quorum can be convened, before any business is taken up, the Secretary shall read the certificate of election, when the Board shall proceed to organize by the election of a President and one or more Vice-Presidents, and shall appoint a Comptroller, Secretary, Treasurer, and such other officers as the Board may designate.

ARTICLE IV.—*Powers of the board.*

SECTION 1. The Board of Directors shall have the whole charge and management of the property and effects of the Com-
61 pany, and may delegate power to an executive committee to do any and all acts which the Board is authorized to do, except such acts as by law or these By-laws must be done by the Board itself. The Board shall have power, in the absence of the President and Vice-President or Vice-Presidents, to appoint a chairman *pro tempore*.

SECT. 2. A majority of all the members is necessary to a quorum, but less than a quorum may adjourn from time to time.

SECT. 3. The Board of Directors shall have power to delegate authority to do and perform specific acts, not inconsistent with the Charter, to special committees to be appointed by the Board, or the presiding officer, at the option of the Board.

SECT. 4. The Board of Directors shall have power to fill any vacancy that may occur by reason of death, resignation, or otherwise, of any director.

SECT. 5. The Board of Directors may prescribe the duties and powers of the Secretary, Treasurer, Comptroller, General Manager, and all subordinate officers and agents, fix the salaries of all officers of the Company, make all needful rules and regulations for the transfer of the stock of the Company, the issuing of certificates of stock, keeping the records and accounts of the Company, the management and disposition in particular of the stock, property, estate, and effects of the Company, and the construction and operation of its road.

62 ARTICLE V.—*Officers and their duties.*

SECTION 1. The officers of the Company shall consist of a President, one or more Vice-Presidents, a Comptroller, a Secretary, a Treasurer, a General Manager, and such other officers as the Board may designate. All officers shall hold their offices during the pleasure of the Board of Directors.

SECT. 2. The President shall preside at all meetings of the Board of Directors when present; shall have general care, supervision, and control of the Company's business in all departments under direction of the Board of Directors, and shall have such other powers and perform such other duties as the Board may from time to time confer or prescribe. He shall call meetings of the Board when he deems it necessary.

SECT. 3. It shall be the duty of the Vice-President, in case of the absence, death, sickness or other inability of the President, to exercise the powers and discharge the duties of the President until his return to duty.

SECT. 4. The Comptroller shall have charge of the general books and accounts of the Company, which shall be kept in his office. He shall be responsible for the system of accounting which may be adopted by the Board of Directors. Reports shall be made to him as often as he may deem necessary, by such officers as he may direct, showing all receipts and disbursements for the Company's account. Copies of all contracts made by any officer or agent of the Company shall be transmitted to and kept on file by the Comptroller.

63 SECT. 5. It shall be the duty of the Secretary to notify officers and directors of their election; to give timely notice to all the directors of the stated and special meetings of the Board; to attend such meetings, and to keep accurate minutes of the same in the books provided for the purpose; to affix the corporate seal of the Company when directed by the Board or the President, and attest the same; and generally to discharge all the ordinary duties of a Secretary, and such as may be required of him by the Board.

SECT. 6. The Treasurer shall have the custody of all funds and securities of the Company; shall collect and receive all moneys earned by, or in any manner due to, or held by, the Company, and shall deposit all receipts in such banks or places of deposit as the Board or Executive Committee shall direct. He shall make all payments on the Company's account for current business, and all vouchers, before being paid by him, shall be approved by the President or the Comptroller. He shall sign all checks and discharge such other duties connected with the finances of the Company as may be required of him.

SECT. 7. The General Manager shall have the general direction of all business relating to the operation of the railroad. All general orders in these departments shall be issued or approved by him. He shall have the care of the railroads operated by the Company, and of the property owned by it. He shall keep the President promptly and fully advised of all important occurrences and transactions in his department.

64 ARTICLE VI.—*Executive Committee.*

SECTION 1. The Board of Directors at its first or any subsequent meeting after each annual election may appoint an Executive Com-

mittee to consist of five members and the President, who shall be a member *ex officio*.

SECT. 2. The Executive Committee by a majority of its members shall have and exercise all the powers and authority of the Board, and in the absence of one or more of its members, those present, whether constituting a quorum or not, shall have the power to appoint a substitute or substitutes from members of the Board of Directors to act during the temporary absence of such member or members of the committee.

SECT. 3. The record of all proceedings of the committee shall be kept, in a book provided for that purpose, by its Secretary, and certified by him, which shall be read, when required, at the next ensuing meeting of the Board of Directors.

SECT. 4. The Secretary of the Committee shall call meetings of the committee on the request of any two of its members.

ARTICLE VII.—*Amendments.*

SECTION 1. These By-laws may be altered or amended by the Directors prior to the first annual meeting of stockholders and thereafter at any meeting of the Stockholders, providing due notice of such alteration or amendment shall have been given in the notice of such meeting.

65 COMPLAINANT'S EXHIBIT 6. (Millar.)

BY-LAWS OF OREGON SHORT LINE RAILROAD COMPANY, AS AMENDED OCTOBER 10, 1906.

SECTION 1. There shall be an annual meeting of the stockholders of this Company for the purpose of electing directors and transacting any other business at the office of the Company, in Salt Lake City, Utah, or at such other place in the State of Utah as shall be specified in the notice of the meeting, at 12 o'clock M. on the second Wednesday of October in each year. The Secretary shall give at least three weeks' notice of the time and place of holding such annual meeting by advertisement in some daily newspaper published and having a general circulation in the State of Utah, and one daily newspaper published in the City and State of New York.

SECTION 2. Special meetings of the stockholders may be held at any time upon order of the Board of Directors or Executive Committee, or whenever any number of stockholders owning not less than one-third in amount of the capital stock of the Company shall in writing make application therefor to the President, specifying the object of such meeting. The business of all such meetings shall be confined to the objects stated in the notice thereof. The Secretary shall give at least three weeks' notice of the object, time and place of holding any such special meeting by advertisement in some
66 daily newspaper published and having a general circulation

in the state of Utah, and one daily newspaper published in the City and State of New York.

SECTION 3. The stock transfer books of the Company shall be closed for such time not less than ten days preceding the date appointed for the holding of any annual or special meeting of the stockholders as the Board of Directors or Executive Committee shall specify. The Secretary shall cause to be prepared an alphabetical list of the stockholders registered as such, at the closing of the stock transfer books, with the number of shares held by each, for the use of Inspectors and of stockholders at any meeting of the stockholders. Each share of stock shall entitle the holder thereof to one vote in person or by proxy in writing, at any meeting of stockholders, provided such stock shall have been registered in the name of such holder upon the books of the Company prior to the closing of the transfer books for the purpose of such meeting.

SECTION 4. The President, and in his absence one of the Vice-Presidents, shall call meetings of stockholders to order and act as chairman of such meetings. In the absence of all these officers, the Board of Directors may appoint a chairman of the meeting to act in such event; but, if the Board should not make such appointment, then, in the absence of all of these officers, any stockholder or proxy of any stockholder may call the meeting to order and a chairman shall be elected.

67 SECTION 5. The Secretary of the Company shall act as secretray at all meetings of the stockholders; but the Board of Directors or Executive Committee may designate an Assistant Secretary for that purpose before the meeting, and, if no such designation shall have been made, then such designation may be made by the presiding officer at the meeting.

SECTION 6. At each meeting of the stockholders the polls shall be opened and closed, the ballots and proxies shall be received and taken charge of, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided, by three Inspectors. Such Inspectors shall be appointed before the meeting by the Board of Directors or by the Executive Committee, and, if no such appointment shall have been made, then by the presiding officer at the meeting; and if for any reason any of the Inspectors previously appointed shall fail to attend, or refuse or be unable to serve, then Inspectors, in place of any so failing to attend or refusing or unable to serve, shall be appointed by the presiding officer at the meeting. Such Inspectors need not be stockholders.

SECTION 7. If at any meeting of the stockholders, the holders of a majority in amount of the stock outstanding are not represented in person or by written proxy, the said meeting shall be adjourned by the stockholders present, or by the Secretary or an Assistant Secretary of the Company, from day to day not exceeding ten days, without the transaction of any business; and if within said ten

68 days, the holders of at least a majority in amount of said stock

do not attend in person or by written proxy and participate in such meeting, then the meeting shall be dissolved. A meeting at which the holders of a majority in amount of the outstanding stock of the Company shall be present in person or represented by proxy may be adjourned to any day and from time to time as such meeting shall determine. The time and place to which an adjournment is taken shall be publicly announced at the meeting, and no further notice thereof shall be necessary.

SECTION 8. There shall be fifteen Directors of said Company, who shall hold their office until the next annual meeting of the Company, and until others are duly chosen in their place and shall have qualified. Any vacancy occurring in the office of Director shall be filled for the unexpired term, by vote of a majority of the remaining directors.

SECTION 9. Regular meetings of the Board of Directors shall be held at such times and at such places in the City and State of New York or elsewhere as the Board of Directors may from time to time prescribe. Special meetings may at any time be called by the Chairman of the Executive Committee or any three members of the Board, to convene at such time and place as may be appointed. A majority of the Directors shall constitute a quorum at all meetings for the transaction of business. If a quorum be not present at any meeting, a majority of the Directors present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be
69 entered on the records by the Secretary, and no further notice of such adjournment shall be required.

SECTION 10. The Board of Directors shall elect one of their number to be President, and shall appoint such Vice-Presidents as the Board may from time to time determine. It shall also appoint a Secretary, a Treasurer, and such Assistant Secretaries, Assistant Treasurers, and such other officers and agents as the Board may from time to time determine.

SECTION 11. The President, Vice-Presidents, Secretary, Treasurer, Assistant Secretaries, Assistant Treasurers, and the other officers appointed by the Board, shall perform such duties and possess such authority as from time to time shall be conferred and prescribed by the Board of Directors or Executive Committee.

SECTION 12. The Directors shall elect from their number an Executive Committee of five members. Such Committee shall hold office until the next annual election of Directors, and shall, when the Board of Directors is not in session, have all the powers of the Board of Directors to manage and direct all the business and affairs of the Company in such manner as said Committee shall deem best for the Company's interests in all cases in which specific directions shall not have been given by the Board of Directors. The Chairman of the Executive Committee shall be elected by the Board of Directors, and, subject to the control and approval of the Executive Committee, shall represent it when not in session. He shall, from time to time, report
70 to the Executive Committee. Any vacancy which may occur in

said Committee shall be filled by the Board of Directors. Regular meetings of said Executive Committee shall be held at such times and at such places in the City and State of New York or elsewhere as the Committee shall from time to time determine. Special meetings may be called at any time by the Chairman or any three members of the Committee, to convene at such time and place as may be appointed. Three members of the Committee shall constitute a quorum. If a quorum be not present at any meeting, a majority of the members of the Committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the Secretary, and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not, at their option, shall have the power to appoint a substitute or substitutes from the members of the Board of Directors to act during the temporary absence of any member or members of the Committee.

SECTION 13. The shares of stock of this Company shall be transferable on the books of the Company, kept for the purpose by such officer as the Board of Directors or the Executive Committee shall from time to time designate. Transfers may be made by any stockholder, or his attorney, duly authorized in writing. It shall be the duty of the designated officer to keep such transfer books, and also a stock ledger and certificate book, and prepare new certificates upon the transfer of shares and surrender of old certificates, and to keep a register of old certificates returned, and of all certificates issued.

71 SECTION 14. The common corporate seal is, and, until otherwise ordered by the Board of Directors, shall be, an impression upon paper or wax, circular in form, with the words, "Oregon Short Line Railroad Company" on the outer edge thereof, and the words and figures "State of Utah, Incorporated, 1897" in the centre thereof.

SECTION 15. These by-laws may be altered, amended or repealed at a general meeting of the stockholders by a majority vote of those present in person or by proxy, or at any meeting of the Directors by a majority vote of all the members of the Board.

COMPLAINANT'S EXHIBIT 7. (Millar.)

BY-LAWS OF THE OREGON RAILROAD AND NAVIGATION COMPANY (AS AMENDED OCTOBER 10, 1906.)

SECTION 1. There shall be an annual meeting of the stockholders of this Company for the purpose of electing directors and transacting any other business at the principal office of the Company in the City of Portland, Oregon, or at such other place in the State of Oregon as shall be specified in the notice of the meeting, at twelve o'clock M., on the first Thursday of September in each year. The Secretary shall give at least three weeks' notice of the time and
72 place of holding such annual meeting by advertisement in some daily newspaper published and having a general circula-

tion in the State of Oregon, and one daily newspaper published in the City and State of New York.

SECTION 2. Special meetings of the stockholders may be held at any time upon order of the Board of Directors or Executive Committee, or whenever any number of stockholders owning not less than one-third in amount of the capital stock of the Company shall in writing make application therefor to the President, specifying the object of such meeting. The business of all such meetings shall be confined to the objects stated in the notice thereof. The Secretary shall give at least three weeks' notice of the object, time and place of holding any such special meeting by advertisement in some daily newspaper published and having a general circulation in the State of Oregon, and one daily newspaper published in the City and State of New York.

SECTION 3. The stock transfer books of the Company shall be closed for such time not less than ten days preceding the date appointed for the holding of any annual or special meeting of the stockholders, as the Board of Directors or Executive Committee shall specify. The Secretary shall cause to be prepared an alphabetical list of the stockholders registered as such, at the closing of the stock transfer books, with the number of shares held by each, for the use of Inspectors and of stockholders at any meeting of the stockholders. Each
73 share of stock shall entitle the holder thereof to one vote in person or by proxy in writing, at any meeting of stockholders, provided such stock shall have been registered in the name of such holder upon the books of the Company prior to the closing of the transfer books for the purpose of such meeting.

SECTION 4. The President, and in his absence one of the Vice-Presidents, shall call meetings of stockholders to order and act as chairman of such meetings. In the absence of all of these officers, the Board of Directors may appoint a chairman of the meeting to act in such event; but, if the Board should not make such appointment, then, in the absence of all of these officers, any stockholder or proxy of any stockholder may call the meeting to order and a chairman be elected.

SECTION 5. The Secretary of the Company shall act as secretary at all meetings of the stockholders; but the Board of Directors or Executive Committee may designate an Assistant Secretary for that purpose before the meeting, and, if no such designation shall have been made, then such designation may be made by the presiding officer at the meeting.

SECTION 6. At each election of Directors the President, if present, shall act as Inspector of Election, and certify who are elected Directors. If the President be not present at any election of directors or other meeting of the stockholders, then the polls shall be opened and closed, the ballots and proxies shall be received and taken
74 charge of, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided, by three Inspectors. Such Inspectors shall be

appointed before the meeting by the Board of Directors or by the Executive Committee, and, if no such appointment shall have been made, then by the presiding officer at the meeting; and if for any reason any of the Inspectors previously appointed shall fail to attend, or refuse or be unable to serve, then Inspectors, in place of any so failing to attend or refusing or unable to serve, shall be appointed by the presiding officer at the meeting. Such Inspectors need not be stockholders.

SECTION 7. If at any meeting of the stockholders, the holders of a majority in amount of the stock outstanding are not represented in person or by written proxy, the said meeting shall be adjourned by the stockholders present, or by the Secretary or an Assistant Secretary of the Company, from day to day not exceeding ten days, without the transaction of any business; and if within said ten days, the holders of at least a majority in amount of said stock do not attend in person or by written proxy and participate in such meeting, then the meeting shall be dissolved. A meeting at which the holders of a majority in amount of the outstanding stock of the Company shall be present in person or represented by proxy may be adjourned to any day and from time to time as such meeting shall determine. The time and place to which an adjournment is taken shall be publicly announced at the meeting, and no further notice thereof shall be necessary.

75 SECTION 8. There shall be fifteen Directors of said Company, who shall hold their office until the next annual meeting of the Company, and until others are duly chosen in their place, and shall have qualified. Any vacancy occurring in the office of Director shall be filled for the unexpired term, by vote of a majority of the remaining directors.

SECTION 9. Regular meetings of the Board of Directors shall be held at such times and at such places in the City and State of New York or elsewhere as the Board of Directors may from time to time prescribe. Special meetings may at any time be called by the Chairman of the Executive Committee or any three members of the Board, to convene at such time and place as may be appointed. A majority of the Directors shall constitute a quorum at all meetings for the transaction of business. If a quorum be not present at any meeting, a majority of the Directors present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the Secretary, and no further notice of such adjournment shall be required.

SECTION 10. The Board of Directors shall elect one of their number to be President, and shall appoint such Vice-Presidents as the Board may from time to time determine. It shall also appoint a Secretary, a Treasurer, and such Assistant Secretaries, Assistant Treasurers, and such other officers and agents as the Board may from time to time determine.

SECTION 11. The President, Vice-Presidents, Secretary,
76 Treasurer, Assistant Secretaries, Assistant Treasurers, and the

other officers appointed by the Board, shall perform such duties and possess such authority as from time to time shall be conferred and prescribed by the Board of Directors or Executive Committee.

SECTION 12. The Directors shall elect from their number an Executive Committee of five members. Such Committee shall hold office until the next annual election of Directors, and shall, when the Board of Directors is not in session, have all the powers of the Board of Directors to manage and direct all the business and affairs of the Company, in such manner as said Committee shall deem best for the Company's interests, in all cases in which specific directions shall not have been given by the Board of Directors. The Chairman of the Executive Committee shall be elected by the Board of Directors, and, subject to the control and approval of the Executive Committee, shall represent it when not in session. He shall, from time to time, report to the Executive Committee. Any vacancy which may occur in said Committee shall be filled by the Board of Directors. Regular meetings of said Executive Committee shall be held at such times and at such places in the City and State of New York or elsewhere as the Committee shall from time to time determine. Special meetings may be called at any time by the Chairman or any three members of the Committee, to convene at such time and place as may be appointed. Three members of the Committee shall constitute a quorum. If a quorum be not present at any meeting a
77 majority of the members of the Committee present may adjourn the meeting until a later day or hour, and a minute of such adjournment shall be entered on the records by the Secretary, and no further notice of such adjournment shall be required; or the members present, whether constituting a quorum or not, at their option, shall have the power to appoint a substitute or substitutes from the members of the Board of Directors to act during the temporary absence of any member or members of the Committee.

SECTION 13. The shares of stock of this Company shall be transferable on the books of the Company, kept for the purpose by such officer as the Board of Directors or the Executive Committee shall from time to time designate. Transfers may be made by any stockholder, or his attorney, duly authorized in writing. It shall be the duty of the designated officer to keep such transfer books, and also a stock ledger and certificate book, and prepare new certificates upon the transfer of shares and surrender of old certificates; and to keep a register of old certificates returned, and of all certificates issued.

SECTION 14. The common corporate seal is, and, until otherwise ordered by the Board of Directors, shall be, an impression upon paper or wax, circular in form, bearing the following words and figures: "The Oregon Railroad and Navigation Company, Incorporated July 16, 1896."

SECTION 15. No mortgage of the property of the Company or any part thereof shall be valid unless authorized or
78 approved by the holders of a majority of both the preferred

stock and of the common stock of this Company; and no lease or sale of any part of the railroad or telegraph lines of this Company shall be valid unless the same shall be authorized or approved by the holders of a majority of both the preferred and the common stock, and no guaranty of this Company of the bonds or obligations of any other company shall be valid unless the same has been likewise so authorized or approved.

SECTION 16. These by-laws, with the exception of Section 15, may be altered, amended or repealed at any meeting of the stockholders by a majority vote of those present in person or by proxy, or at any meeting of the Directors by a majority vote of all the members of the Board.

COMPLAINANT'S EXHIBIT 8. (Millar.)

BY-LAWS OF THE SOUTHERN PACIFIC COMPANY (AS AMENDED JUNE 9TH, 1904.)

Article 1. There shall be an annual meeting of the stockholders of said company, for the purpose of electing directors and doing any other proper business, at the office of the company in Beechmont,
Jefferson County, Kentucky, on the Wednesday following the
79 first Monday in April in each year. The Clerk shall give
two weeks' notice of the time and place of holding such annual meeting by advertisement in a newspaper published in each of the cities of Louisville, in the State of Kentucky, of New York, in the State of New York, and San Francisco, in the State of California.

Article 2. Special meetings of the stockholders may be held at any time upon order of the Board of Directors or Executive Committee, and the Clerk shall give notice of such meetings in the same manner as notices for annual meetings are given. All meetings of the stockholders shall be called to order by the President, and in his absence by one of the Vice-Presidents. In the absence of all of these officers such meeting shall be called to order by the Clerk or Assistant Clerk of the Company. The Chairman of the meeting shall be elected by a stock vote of the stockholders, and he shall appoint from among the stockholders present three inspectors of election, who shall also act as a committee on stock and proxies.

Article 3. There shall be fifteen directors of said company, who shall hold their office until the next annual meeting of the company, and until others are duly chosen in their place.

Article 4. Regular meetings of the Board of Directors shall be held at such times as the Board of Directors may from time to time prescribe. Special meetings may at any time be called by the Chairman
of the Executive Committee or any three members of the
80 Board, to convene at such time and place as may be appointed.
A majority of the Directors shall constitute a quorum at all meetings for the transaction of business.

Article 5. The Board of Directors shall elect one of their number to be a President, and shall appoint such Vice-Presidents as the Board shall from time to time determine. It shall also appoint a Treasurer, a Clerk and Secretary, an Assistant Clerk, and such Assistant Treasurers and Assistant Secretaries as the Board may from time to time determine.

Article 6. The President, Vice-Presidents, Treasurers, Secretary and Clerk, Assistant Treasurers, and Assistant Secretaries and Clerks shall perform such duties as shall be from time to time conferred and prescribed by the Board of Directors or Executive Committee.

Article 7. The Directors shall elect from their number an Executive Committee of five members. Such committee shall hold office until the next annual meeting of stockholders and shall, when the Board of Directors is not in session, have all the powers of the Board of Directors to manage and direct all the business and affairs of the company in such manner as said committee shall deem best for the company's interests in all cases in which specific directions shall not have been given by the Board of Directors. The Chairman of the Executive Committee shall be elected by the Board of Directors, and, subject to the control and approval of the Executive Committee, shall represent it when not in session. He shall, from time to time, report to the Executive Committee. Any vacancy which may occur in said committee shall be filled by the Board of Directors. Regular meetings of said Executive Committee shall be held at such times as the committee shall from time to time determine. Special meetings may be called at any time by the Chairman or any three members of the committee. Three members of the committee shall constitute a quorum.

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Article 8. The shares of stock of this company shall be transferable on the books of the company, kept for the purpose by such officer as the Board of Directors or the Executive Committee shall from time to time designate for the purpose. Transfers may be made by any stockholder, or his attorney, duly authorized in writing. It shall be the duty of the designated officer to keep such transfer books, and also a stock ledger and certificate book, and prepare new certificates upon the transfer of shares and surrender of old certificates; and to keep a register of old certificates returned, and of all certificates issued; and on the day of the annual election the Secretary shall furnish for the use of the stockholders an alphabetical list of the names of all the stockholders, with the number of shares so held by them respectively.

Article 9. The office required by the charter to be kept in the State of Kentucky shall be kept at Beechmont, Jefferson County, Kentucky, until the Board of Directors shall otherwise order; and the general offices of the company, outside of the State of Kentucky, shall be in the City of San Francisco, in the State of California, or in the City of New York, in the State of New York.

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Article 10. These By-laws may be altered, amended or repealed at any meeting of the stockholders by a majority vote of those present in person or by proxy, or at any meeting of the Directors by a majority vote of all members of the Board.

COMPLAINANT'S EXHIBIT 9. (Millar.)

BY-LAWS OF THE SOUTHERN PACIFIC RAILROAD COMPANY, ADOPTED MARCH 24, 1902, AMENDED JANUARY 6, 1904, MARCH 2, 1905, AND NOVEMBER 2, 1905.

SECTION 1. Annual Meetings of the Stockholders of this Company shall be held at the office of the Company in the City and County of San Francisco, on the second Tuesday of April in each year, at twelve (12) o'clock noon, or at such other time as shall be appointed by a resolution of the Board of Directors, at which an election for eleven directors shall be held, to serve for the ensuing year and until their successors are elected, and such other business transacted as may come before the meeting.

SECTION 2. The Chairman of the meeting, together with
83 two stockholders, both to be chosen at the annual meeting for that purpose, shall act as the Judges of Election, receive, count and canvass the votes and declare the result without delay. The Secretary shall be tally clerk and shall keep a tally list of all votes cast at said election and preserve the same in his office. The vote for the election of directors shall be taken by ballot, and each voter shall indorse on his ballot his name and the number of votes cast by him. The said Judges of Election and Secretary shall certify the result thereof to the Board of Directors.

SECTION 3. At all meetings of the Stockholders absent members may vote by proxy duly authorized in writing, signed by the respective stockholders granting them, and such proxies shall be filed with the Secretary. When the proxy is included in a general power of attorney, a copy thereof shall be filed with the Secretary and the original produced to the Judges of Election, if required by them. It shall be the duty of the Secretary, previous to every such meeting, to make an alphabetical list of all stockholders, with the number of votes each is entitled to cast, and have the same present at such meeting for the use of the officers thereof.

SECTION 4. Meetings of the stockholders may be called at any time during the interval between the annual meetings, by the Board of Directors, or by any number of stockholders owning not less than one-half in value of the stock. In the case of meetings called by stockholders, such calls must be in writing and addressed to the Secretary, who must thereupon give notice, in the manner pro-
84 vided by law for the annual election of directors, of the time and place of the meetings, and by whose order it is called. When any such meeting is called by the stockholders, the particular

object of such meeting shall be stated in such call, and also in the notice, and no other business shall be transacted at such meeting.

SECTION 5. Regular meetings of the Board of Directors shall be held on the first Thursday of each month, at 12 o'clock noon, at the office of the company, and six or more directors shall constitute a quorum at all meetings for the transaction of business. Special meetings of the Board may at any time be called by the President or either of the Vice-Presidents, or any three members of the Board, to convene at such time and place as may be appointed.

All the meetings of the Board, both regular and special, may be adjourned from time to time for want of a quorum.

SECTION 6. There shall be elected by the Directors from among their number a President, Vice-President and Second Vice-President. The Board shall also elect a Treasurer and an Assistant Treasurer, and a Secretary and Assistant Secretary, and may elect or appoint such additional Vice-Presidents and Assistant Secretaries as may be deemed expedient; such additional Vice-Presidents and Assistant Secretaries shall have such power as shall be conferred upon them by the Board.

They shall also elect or appoint a Comptroller, who shall have such powers and perform such duties as may be conferred and prescribed by the Board of Directors from time to time.

85 SECTION 7. The President of the Company shall have a general supervision, subject to the order of the Board of Directors, of the business and affairs of the company, and shall, when present, preside at all meetings of the Board of Directors and of the Stockholders.

The Vice-President or Second Vice-President shall exercise all the powers and duties of the President whenever the President shall be absent or unable from any cause to discharge his duties in person.

In the absence of the President and both Vice-Presidents, a President *pro tem.* may be appointed by the Directors, who shall discharge the duties of President.

SECTION 8. The Secretary shall be the recording officer of the company. He shall keep full and complete minutes of all meetings of the stockholders and of the Board of Directors. He shall be the custodian of the corporate seal and shall affix the same to such instruments as shall be authorized by the Board of Directors. He shall perform such other duties as legally pertain to his office, or as may be required of him by the Board of Directors.

SECTION 9. The Treasurer shall safely keep, or cause to be kept, in the name of the company, all monies belonging to the company, and shall disburse the same in such manner as the Board shall direct.

He shall also take charge of and safely keep all securities and
86 evidences of debt appropriately belonging to his department.

He shall sign all notes, checks and drafts of the company, under such restrictions and regulations as the Board of Directors shall prescribe.

SECTION 10. The capital stock of the company shall be represented by certificates therefor to be signed by the President or any Vice-President of the company and the Secretary or Assistant Secretary of the company, under the corporate seal, and shall be in such form as the Board of Directors shall approve. Certificates of stock shall be issued only for fully paid stock. Such stock shall be transferable on the books of the company, by indorsement on the certificate by the signature of the proprietor, or his attorney or legal representative, and the surrender of the certificate to be transferred. The surrendered certificate shall be canceled by the Secretary before a new certificate is issued.

SECTION 11. These by-laws may be repealed or amended or new by-laws adopted by the Board of Directors upon the concurrence of a majority of the full Board at any regular meeting, after notice given at a previous meeting of the Board.

87 Q. Mr. Millar, the Southern Pacific Company's meeting is held in April every year, is it not?

A. The annual stockholders', yes, sir.

Q. Along about April 6th? What day? Do you remember?

A. No, sir.

Q. Monday or Tuesday?

A. (Referring to book.) The Wednesday following the first Monday in April.

Q. The Wednesday following the first Monday?

A. Yes, sir.

Q. About when are the books of the Southern Pacific closed for this annual meeting?

A. We have not had any fixed date. I think the effort has been to give sufficient time to make up the lists—about thirty days.

Q. About thirty days? That is, the executive committee of the board of directors of the Southern Pacific Company close the books on a certain day, about thirty days before the annual stockholders' meeting, in order to allow you to make up the list of stockholders appearing of record as the stockholders of that company on that date?

A. Yes, sir.

Q. This is the usual custom in all railways, is it not?

A. Yes, I think so, with some exceptions.

Q. They close their books on a certain day?

A. Yes, sir.

Q. And the stockholders appearing on that day vote the stock?

A. Yes, sir.

Q. Now, the books of the Southern Pacific Company showing its stockholders on the day are of course, and have been, under your control since the Union Pacific acquired its stock, have they not?

A. The stock-books, yes, sir.

Q. And no one but you or the officials of that company have

88 access to those books?

A. Not ordinarily, no, sir. There have been exceptions.

Q. Ordinarily not, you say?

A. Yes, sir.

Q. When the books have been closed, you, as secretary, or under your direction, have prepared a list of the stockholders of the Southern Pacific Company who are entitled to vote at its annual meeting?

A. Yes, sir.

Q. Those are the stockholders who show of record on the date the books are closed?

A. Yes, sir.

Q. Now, as a matter of fact, you then send out proxies?

A. Yes, sir.

Q. To each stockholder who appears of record on the books of the Southern Pacific on the day they are closed?

A. Yes, sir.

Q. Those proxies are sent out with the names of certain persons which you have inserted to vote their stock, are they not?

A. I think generally, yes, sir.

Q. Generally three names?

A. Yes, more than one, usually.

Q. They are usually officials, or somebody connected with your organization?

A. Yes, sir.

Q. I show you a Southern Pacific proxy. (Handing proxy to witness.) This purports to be the proxy for the annual meeting of the Southern Pacific Company to be held at Beechmont, Jefferson County, Kentucky, Wednesday, the 4th of April, 1906. The names of the parties inserted as voting the Union Pacific or Short Line stock at that time are E. H. Harriman, Alex. P. Humphrey and W. D. Cornish. Mr. Harriman and Mr. Cornish are, respectively, the president and vice-president of the Union Pacific Railroad Company, are they not?

89

A. Yes, sir.

Q. Who is the other?

A. I think a lawyer in Louisville, not identified with the Union Pacific, according to my knowledge.

Q. I show you copies of proxies. Are those the forms of proxies sent out by you or under your direction to the stockholders of the Southern Pacific Company at each annual meeting since 1900 for the election of directors?

A. It is admitted by Mr. Evarts that they are such.

Mr. SEVERANCE. I offer the form of proxy sent out for the year 1900, prior to the acquisition of the Southern Pacific stock by the Union Pacific.

The same was marked Complainant's Exhibit 10 (Millar), and is as follows:

COMPLAINANT'S EXHIBIT 10. (Millar.)

Know all men by these presents, That I _____ do hereby constitute and appoint _____ and _____ or either of them, Attorneys and Agents, or Attorney and Agent, for me and in my name, place and stead, to vote as my proxy at the annual meeting of the stockholders of the Southern Pacific Company, to be held in the City of San Francisco, California, on the fourth day of April, 1900, or at any adjournment or adjournments thereof, according to the number of votes that I should be entitled to vote, if then personally present, with power of substitution and revocation, hereby revoking all proxies previously given.

90 In witness whereof, I have hereunto set my hand and seal this ____ day of March, 1900.

Sealed and delivered in presence of

_____

Mr. SEVERANCE. I offer the form of proxy sent out for the meeting for the year 1902.

The same was marked Complainant's Exhibit 11 (Millar), and is as follows:

COMPLAINANT'S EXHIBIT 11. (Millar.)

Proxy. Shares.

SOUTHERN PACIFIC COMPANY.

Know all men by these presents, That I, _____ do hereby constitute and appoint Edward H. Harriman and Charles H. Tweed, or either of them, Attorney and Agent for me, and in my name, place and stead, to vote as my proxy at the Annual Meeting of the Stockholders of the Southern Pacific Company, to be held on the 9th day of April, 1902, and at any and all adjournments thereof, according to the number of votes that I should be entitled to vote, if then personally present, with power of substitution and revocation.

In witness whereof, I have hereunto set my hand and seal this ____ day of _____ one thousand nine hundred and two.

Sealed and delivered in the presence of:

_____, Post Office Address.

91 NOTE.—Please date and sign this proxy in the presence of a subscribing witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City. It will also be a convenience if you will add your correct post office address.

Mr. SEVERANCE. I offer the form of proxy sent out for the meeting for the year 1903.

The same was marked Complainant's Exhibit 12 (Millar), and is as follows:

COMPLAINANT'S EXHIBIT 12. (Millar.)

Proxy. ------ Shares.

SOUTHERN PACIFIC COMPANY.

Know all men by these presents, That ---------- stockholder in Southern Pacific Company, hereby constitute and appoint E. H. Harriman, Alex. P. Humphrey and Maxwell Evarts, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all stock standing in the name of the undersigned at the Annual Meeting of the Stockholders of said Company, to be held on Wednesday, the eighth day of April, A. D. 1903, and at any and all adjournments thereof, for the purpose of electing directors of
92 said Company and for the transaction of any other business which may come before said meeting, with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ---- have hereunto set ---- hand and seal this ---- day of ----------, 1903.

------ ---------- (L. S.)

Witness:

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

Mr. SEVERANCE. I offer the form of proxy sent out for the meeting for the year 1904.

The same was marked Complainant's Exhibit 13 (Millar), and is as follows:

COMPLAINANT'S EXHIBIT 13. (Millar.)

Proxy.—Southern Pacific Company. ------ Shares.
Annual Meeting, April 6, 1904.

Know all men by these presents, That ---------- the undersigned stockholder in Southern Pacific Company, hereby constitute
93 and appoint E. H. Harriman, Alex. P. Humphrey, and W. D. Cornish, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney

or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all stock standing in the name of the undersigned at the Annual Meeting of the Stockholders of said Company to be held at Beechmont, Kentucky, on Wednesday, the sixth day of April, A. D. 1904, and at any and all adjournments thereof, for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting, with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ____ have hereunto set ____ hand and seal this ____ day of ----------, 1904.

---------- (L. S.)

Witness:

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York City.

94 Mr. SEVERANCE. I offer the form of proxy sent out for the meeting for the year 1905.

The same was marked Complainant's Exhibit 14 (Millar), and is as follows:

COMPLAINANT'S EXHIBIT 14. (Millar.)

Proxy.—Southern Pacific Company. ------ Shares.
Annual Meeting, April 5, 1905.

Know all men by these presents, That ---------- the undersigned stockholder in Southern Pacific Company, hereby constitute and appoint E. H. Harriman, Alex P. Humphrey and W. D. Cornish or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all stock standing in the name of the undersigned at the Annual Meeting of the Stockholders of said Company, to be held at Beechmont, Kentucky, on Wednesday, the fifth day of April, 1905, and at any and all adjournments thereof, for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting, with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters, as though the under-

signed were personally present and voting. Authority is
95 hereby given that any of said attorneys or their substitutes may act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ____ have hereunto set ____ hand and seal this ____ day of _____, 1905.

_____ _____ (L. S.)

Witness:

_____

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York, N. Y.

Mr. SEVERANCE. I offer the form of proxy sent out for the meeting for the year 1906.

The same was marked Complainant's Exhibit 15 (Millar), and is as follows:

COMPLAINANT'S EXHIBIT 15. (Millar.)

Proxy—Southern Pacific Company, Annual Meeting, April 4, 1906. Shares {Preferred _____ / Common _____

Know all men by these presents, That _____, the undersigned stockholder in Southern Pacific Company, hereby constitute and appoint E. H. Harriman, Alex. P. Humphrey and W. D. Cornish, or any or either of them, or such person or persons as they or a majority of them may substitute and appoint their attorney or
96 attorneys in their place and stead, lawful agents and attorneys of the undersigned, for and in the name and stead of the undersigned to appear and to vote, in respect of all stocks standing in the name of the undersigned, at the Annual Meeting of the Stockholders of said Company, to be held at its office at Beechmont, Jefferson County, Kentucky, on Wednesday, the fourth day of April, 1906, and at any and all adjournments thereof, for the purpose of electing directors of said Company and for the transaction of any other business which may come before said meeting, with power in the name and on behalf of the undersigned, to vote at said Annual Meeting upon any and all questions and matters, as though the undersigned were personally present and voting. Authority is hereby given that any of said attorneys or their substitutes may act in the absence of the others. All proxies heretofore made or given by the undersigned are hereby revoked.

In witness whereof, ____ have hereunto set ____ hand and seal this ____ day of _____, 1906.

_____ _____ (L. S.)

Witness:

_____

Please date and sign this proxy in the presence of a witness and return it in the enclosed envelope to Alex. Millar, Secretary, 120 Broadway, New York, N. Y.

Mr. SEVERANCE. I will state that I requested the form of proxy for the year 1901, and was told by Mr. Lovett that he was unable to furnish it as there was none left in the files.

97 Q. (Referring to these exhibits.) From what office are they sent out?

A. Southern Pacific Company.

Q. In New York?

A. Yes, sir.

Q. Under your charge?

A. Yes, sir.

Q. The same office the Union Pacific has down here?

A. Yes, sir.

Q. 120 Broadway, isn't it?

A. Yes, sir.

Q. All these four companies, Pacific companies, have common offices here in New York, have they not?

A. Yes, sir, they are in the same building.

Q. The principal offices are in the same building?

A. Some of them, yes, sir.

Q. The president and vice-president, you have already told us?

A. Yes, sir. Some of the departments are entirely separate.

Q. Yes, but the secretary's office and the comptroller's office and the president's office and the vice-president's office, and the counsel's office are all common?

A. Yes, sir.

Q. I notice by looking at each of these proxies that a majority of the persons to vote the Southern Pacific stock were Union Pacific officials or employees; is that not true?

A. Yes, sir.

Q. Now, when you make up these stock lists for the annual meeting for the election of directors of the Southern Pacific, you usually preserve them, do you not?

A. Yes, sir; that is our intention.

Q. You have never obtained at a meeting of the Southern Pacific Company since you became its Secretary, a full vote of the stockholders, have you?

A. No, sir.

Q. It is not usual, taking into consideration the number
98 of stockholders of the company, to have anywhere near a full vote of the stockholders, is it?

A. Some of our companies have a full vote and some do not.

Q. The only companies you have which have a full vote are those where the Union Pacific owns all the stock, isn't it?

A. Yes, sir.

Q. Or the Southern Pacific owns all the stock?

A. I limit my answer to the Union Pacific.

Q. In the Southern Pacific Company, out of $197,000,000 and a little over, of common stock, state about the average amount of stock represented at a meeting.

A. At the meeting of 1900, out of 1,884,000 shares, 1,859,000 shares were voted.

Q. That was before the Union Pacific's control, wasn't it?

A. Yes, sir. In 1901, out of 1,978,000 shares, 1,736,000 were voted. At a second meeting of the same year, 1,742,000 shares were voted. In 1902, 1,573,000 shares were voted, and up to 1904 about the same number of shares were voted. In 1905, after an increase of the capital stock, 1,974,000 shares were voted; and in 1906, 2,000,000—a little over 2,000,000 shares were voted.

Q. And the Oregon Short Line owned and voted more than a majority, a large majority, of the stock voted at meeting.

Mr. KELLOGG. Is it admitted?

Mr. MILBURN. Yes, sir, it is on the record.

Q. I show you pages 151 and 152 of Vol. 2 of the executive committee of the Union Pacific. Is that the original record?

A. Yes, sir.

Q. Of these executive committee meetings of the Union
99 Pacific Railroad Company?

A. Yes, sir.

Q. Will you please read the resolution by which the Union Pacific designated the directors to be voted for in the Southern Pacific, with the names of the directors?

A. Yes, sir. The record reads as follows: "March 21st, 1901. Attention having been called to the approaching stockholders' meeting April 3rd, of the Southern Pacific Company, it was, on motion duly made and seconded, unanimously resolved that the stock held for and on behalf of this company be voted for the following list of directors:

"T. J. Coolidge, Jr., George J. Gould, E. H. Harriman, Edward Hawley, Charles M. Hays, H. E. Huntington, James H. Hughitt, Otto H. Kahn, John W. Mackay, D. O. Mills, Winslow S. Pierce, Jacob H. Schiff, James Speyer, James Stillman, Charles H. Tweed."

Q. Mr. Millar, who gave you the names of the persons to vote the Southern Pacific stock as proxies, to put in the printed proxies which you sent out?

A. Do you mean every year or in one particular year?

Q. Every year. Who directed it?

A. I do not recall it.

Q. Well, you know one year there the Union Pacific did it, don't you?

A. The committee ordered that list, yes, sir, that year.

Q. The Executive committee of the Union Pacific is composed of how many directors?

A. There are five at the present time.

Q. By your by-laws they are given all the power of the
100 board, are they not?

A. Yes, sir, when the board is not in session.

Q. I will show you the by-laws in a printed form. Take the Union Pacific; they are all the same, I see. Section 12 provides: "The directors shall elect from their number an executive committee of five members. Such committee shall hold office until the next annual election of directors, and shall, when the board of directors is not in session, have all the powers of the board of directors to manage and direct all the business and affairs of the company in such manner as such committee shall deem best for the company's interest in all cases in which specific directions shall not have been given by the board. The Chairman of the executive committee shall be elected by the board of directors, and subject to the control and approval of the executive committee, shall represent it when it is not in session."

Q. Mr. Harriman is chairman, isn't he?

A. Yes, sir.

Q. Of each executive committee of all the companies?

A. Yes, sir.

Q. And the companies have uniform by-laws practically on that subject?

A. Practically. I have not compared them carefully.

Mr. SEVERANCE. They are in evidence anyway.

Q. Who designated the executive committee to be elected?

A. The board of directors.

Q. You simply know they were elected?

A. Yes.

Q. I show you a resolution of the board of the Union Pacific,
101 adopted August 29, 1899, and certified by you. Is that a correct certified copy of the resolution of that date?

A. Yes, sir.

Mr. SEVERANCE. This paper I offer in evidence as Complainant's Exhibit 16 (Millar). It is meeting of the directors of the Union Pacific Railroad company of the date stated, and refers to Oregon Short Line stock and bonds and Oregon Railroad & Navigation stocks, and acquisition of Short Line and Navigation securities. This exhibit was Exhibit 24 in Mr. Millar's testimony in the Interstate Commerce Commission record.

Complainant's Exhibit 16 (Millar) is as follows:

COMPLAINANT'S EXHIBIT 16. (Millar.)

UNION PACIFIC RAILROAD CO.

(DIRECTORS, *Aug. 29, 1899.*)

O. S. L. Stock & Inc. Bds. & O. R. & N. Stocks. Acquisition of Short Line and Navigation Securities.

The Chairman of the Executive Committee laid before the Board the action of the Committee at its meeting of August 24, 1899, at which a resolution calling the present meeting was adopted. He

briefly reviewed the relations through ownership and control of securities, which this Company bears towards the Oregon Short Line Railroad Company and, through that Company, to the Oregon Railroad and Navigation Company, calling attention to the fact that this Company owns substantially all of the stock of the Oregon
102 Short Line Railroad Co., and that the latter Company owns, subject to the pledge under its Income B. Mortgage $16,281,400 out of $24,000,000 of the outstanding common stock of the Oregon Railroad and Navigation Company and also $976,900 of the preferred stock of that company.

He referred to the amount of outstanding Income A 5% Bonds and Income B 4% Bonds of the Short Line Company and of the outstanding preferred stock of the Navigation Company as follows:

Short Line Income A. 5% Bonds	$7,185,000
Short Line Income B. 4% Bonds	14,841,000
Navigation Preferred Stock	11,000,000
Navigation Common Stock (exclusive of Short Line Holdings)	7,718,600

He pointed out the considerations which in his view and that of the other members of the Executive Committee suggested the expediency of the acquisition by this Company of the Short Line B. Bonds and the Navigation preferred stock through the issue of not exceeding a corresponding amount at par of the preferred stock of this Company, the acquisition of the Navigation Common stock (exclusive of holdings of the Short Line Company pledged under its B. Mortgage) through the issue of not exceeding a corresponding amount of the common stock of this Company, and the acquisition of the Short Line A 5% Income Bonds through the use of reserved bonds or cash resource of this Company upon such a basis as to save to this Company (in view of its proprietary interest in the Short Line) 1% per annum upon the outstanding A. Bonds.

103 In this connection he discussed the obligatory and burdensome conditions of the Short Line Income Mortgage as affecting and hampering the financial policy of the Short Line Company, and its power to apply its current revenues to such improvements as experience indicated to be necessary in order to get the best and most permanent results from the operation of the property.

The Chairman also submitted statements of the financial results of the operations of the Union Pacific, Short Line and Navigation properties for the year ending June 30, 1899, and showing the comparative surplus results in proportion to the securities of each Company upon which interest or dividends were paid. He also compared the relative market prices for the several classes of securities affected by the proposed operation. He stated that the acquisition of the Navigation preferred stock and the Short Line B. Bonds on the basis indicated would secure the control of the Navigation property and complete the extension of this Company's system to the Pacific Coast, would strengthen this Company's proprietorship in the Short Line, and substitute stock, upon which dividends would rest in the sound

discretion of the Company, in the place of bonds upon which the interest charge is now practically obligatory.

The Chairman concluded by recommending that appropriate action be taken by the Board to secure the following results:

1. An increase of the preferred stock of this Company by the amount of $25,000,000.

104 2. An increase of the common stock of this Company by the amount of $7,718,600.

3. An application of this increased preferred stock, or such part of it as may be necessary, to the acquisition of the outstanding B. Income Bonds of the Short Line Company, and of the preferred stock of the Navigation Company.

4. Application of the increased common stock, or such part of it as may be necessary, for the acquisition of outstanding Navigation common stock (exclusive of that owned by the Short Line Company).

5. The acquisition by this Company through the use of reserved bonds, or other cash resources, of the Short Line Income A. Bonds on such a basis as will impose a charge not to exceed 4% per annum on the corresponding obligations or investments of this Company.

Upon full consideration of the statements and views submitted by the Chairman of the Executive Committee and of the subject-matter of his recommendations, the following preambles and resolutions were, upon motion, duly made and seconded, unanimously adopted:

Whereas this Company is the owner of substantially all of the outstanding capital stock of the Oregon Short Line Railroad Company, whose lines of railroad in the States of Wyoming, Utah, Idaho and Oregon include a main line extending from a point on this Company's main line at Granger, in Wyoming, to Huntington, in Oregon, and said Oregon Short Line Railroad Company is the owner of a large majority of the outstanding common capital stock of the Oregon Railroad and Navigation Company, whose lines of rail-

105 road in the States of Oregon, Washington and Idaho include a main line extending from Huntington to Portland, in the State of Oregon, and,

Whereas the lines of Railroad of said Oregon Short Line Railroad Company and said The Oregon Railroad and Navigation Company constitute extensions and auxiliary lines of the railroad of this Company, and are not parallel or competitive therewith and,

Whereas in the opinion of the Board of Directors it is desirable that the outstanding preferred stock of the said The Oregon Railroad and Navigation Company, amounting to $11,000,000, should be acquired by this Company, and it is believed that such acquisition can be accomplished, or substantially accomplished, by the issue and use therefor of this Company's preferred stock in an amount not to exceed the amount of preferred stock of said The Oregon Railroad and Navigation Company so acquired, and

Whereas in the opinion of the Board of Directors it is also desirable that the outstanding common stock of The Oregon Railroad and Navigation Company (exclusive of such stock owned by the

Oregon Short Line Railroad Company and pledged under its Income B Mortgage) should be acquired by this Company, and it is believed that such acquisition can be accomplished, or substantially accomplished, by the issue and use therefor of this Company's common stock in an amount not to exceed the amount of such common stock of the said The Oregon Railroad and Navigation Company so acquired, namely $7,718,600, and

106 Whereas in the opinion of the Board of Directors it is desirable that the outstanding Collateral Trust Non-Cumulative Income B Bonds of the said Oregon Short Line Railroad Company should be acquired by this Company, and it is believed that such acquisition can be accomplished, or substantially accomplished, by issue and use of this Company's preferred stock in an amount not exceeding the amount of such Income B Bonds so acquired, and

Whereas, for the purposes aforesaid, an increase of the preferred capital stock of this Company by the amount of $25,000,000 and an increase of its common capital stock by the amount of $7,718,600 are required, and to this end an amendment of the Articles of Association or Charter of this Company, authorizing such increase of its preferred and common capital stock, is necessary;

Resolved, That the Board of Directors of Union Pacific Railroad Company hereby recommends to the stockholders of said Company that the following amendment of this Company's Articles of Association be adopted and made as and in the manner provided for by the laws of the State of Utah:

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its preferred capital stock by the amount of $25,000,000 and its common capital stock by the amount of $7,718,600 amend its articles of association by substituting as Article 4 thereof, and in the place of said Article as amended and heretofore existing, the following:

107 ARTICLE 4. The amount of the capital stock of the said corporation shall be one hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($196,178,700), which shall be divided into and represented by one million nine hundred and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock one million (1,000,000) shares of one hundred dollars each may be issued as preferred stock and nine hundred and sixty-one thousand seven hundred and eighty-seven (961,787) shares of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled in preference and priority over the common stock of said corporation to dividends in each and every fiscal year at such rate not exceeding four per cent. per

annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative, and the preferred stock is entitled to no other or further share of profits. The directors may adopt proper by-laws to carry into effect the provisions of this Article.

Further Resolved, That a meeting of the stockholders of Union Pacific Railroad Company be and the same is hereby called to be held at the office of the said Company at Salt Lake City, in the State of Utah, on the ninth day of October, 1899, at twelve o'clock, noon, for the purpose of considering and acting upon a proposed amendment of the Articles of Association of this Company, increasing
108 its preferred capital stock by the amount of $25,000,000, and its common capital stock by the amount of $7,718,600, and of authorizing the issue and use of such additonal stock, and of taking all suitable action in this behalf; and that the books for the transfer of stock (both common and preferred) be closed for the purpose of the meeting at the close of business on Saturday, September 9th, 1899, and reopened on the 11th day of October, 1899, or in the event of any adjournments of said meeting or of the annual meeting of stockholders to be held on October 10th, 1899, then on the day following the date of the last of any such adjourned meetings.

Further Resolved, That the Secretary of this Company be and he is hereby authorized and directed to give and publish notice of the special meeting of the stockholders of this Company as required or provided by law and by the by-laws of this Company, and in addition thereto to mail to each registered holder of stock of this Company, at the closing of the books on September 9, 1899, a copy of the foregoing resolutions.

Further Resolved, That all matters connected with the various exchanges contemplated in the resolutions this day adopted, including any adjustment of interest or dividends on securities affected thereby, and the time and manner of carrying out the substantial purposes and plan of the foregoing resolutions, be and they are hereby left to the Executive Committee with full discretion and power.

Further Resolved, That the officers of this Company be and they are hereby authorized to acquire on its behalf the outstanding Collateral Trust Series A 5% Income Bonds of the Oregon
109 Short Line Railroad Company, and to pay therefor an equivalent amount in the First Mortgage four per cent Gold Bonds of this Company, and that, to this end, the Secretary of the Company is hereby authorized and directed to issue to the holders of Oregon Short Line Railroad Company 5% Series A Income Bonds a notice and offer in the following form:

> Union Pacific Railroad Company, desiring to acquire a majority of the 5% Income Bonds, Series A, of the Oregon Short Line Railroad Company, offers to holders of such bonds to exchange the same for its own First Mortgage four per cent Gold Bonds, bond for bond, interest to be adjusted as accrued to September 1st.

This is not to constitute a standing offer, but it is intended this offer shall cease without further notification as soon as sufficient bonds have been exchanged for the purposes of Union Pacific Railroad Company.

Holders of the Oregon Short Line 5% Income Bonds, Series A, desiring to avail of this offer will promptly tender their bonds for exchange, either to the Old Colony Trust Company, Boston, or the Union Pacific Railroad Company, 120 Broadway, New York.

Further Resolved, That the foregoing offer shall be subject to termination at any time by action of the Executive Committee, to which committee the subject of the extent to which the Series A Income Bonds of the Oregon Short Line Railroad Company shall be acquired is referred with full power.

110 Q. State generally what that resolution is. Isn't that the resolution for the acquisition of the securities of the Oregon Short Line and the Navigation Company by the Union Pacific?

A. It provided for the acquisition of the Income A Bonds and the Income B Bonds of the Oregon Short Line Railway Company, and a part of the preferred and common stock of the Navigation Company.

Q. Yes, sir. The Union Pacific already owned the stock, or most of it of the Short Line, did it not—1899, if you recollect?

A. I do not recall the dates, Mr. Kellogg. I think that is probably the fact.

Q. I show you Complainant's Exhibit 17 [Exhibit 25, I. C. C. record]. Is that a certified copy of a resolution?

A. This is a certified copy of a resolution adopted by the Board of Directors of the Union Pacific Railroad Company February 20, 1901.

Q. That was for the acquisition of the Southern Pacific stock, was it not?

A. It had in view the purchase of some shares of Southern Pacific.

Mr. SEVERANCE. I offer in evidence Complainants' Exhibit 17 (Millar).

Complainant's Exhibit 17 (Millar) is as follows:

COMPLAINANT'S EXHIBIT 17. (Millar.)

UNION PACIFIC R. R. CO.

(Board of Directors, Feb. 20, 1901.)

Purchase of Southern Pacific Co. Stock and Issue of Union
111 *Pacific Convertible 4% Bonds.*

The Chairman submitted to the meeting the record and resolutions of the Executive Committee at its meeting held on February 5, 1901, which were read as follows:

"The Chairman submitted to the Committee a letter from Messrs. Kuhn, Loeb & Co., as follows:

"FEBRUARY 4, 1901.

"To the Executive Committee of the Board of Directors, Union Pacific Railroad Co.

"GENTLEMEN: We have purchased 432,700 shares of the Southern Pacific Company of Kentucky, to be paid for as follows:

"144,233 shares on February 11th.

"288,467 shares on, or at our option before, July 10th, with interest at 4% per annum from February 11th, all said shares to be deposited with a Trust Company until entire payment is completed.

"We have further purchased the following shares:

"200,000 shares to be paid for on, or at our option before, March 4th.

"45,000 shares to be paid for, one-half on February 5th, and one-half on February 8th.

"The average price at which we have made the above purchases, exclusive of interest accruing, is $50.6146 per share.

"We hereby offer to transfer to you our entire purchases as above specified, upon the terms and conditions as entered into and
112 set forth above, your Company to take over and assume the contracts of purchase.

"In order that your holdings of Southern Pacific stock may aggregate 750,000 shares, we agree to sell to you on March 4, 1901, 72,300 additional shares at the same price, viz.: $50.6146 per share, plus interest at the rate of 4% from February 11, 1901.

"In addition to the above purchase prices, we are to be paid by your company two and one-half dollars ($2.50) per share upon said 750,000 shares, as profit to us for the risk assumed in making these purchases.

"If you conclude to accept this offer, please advise us promptly, and we are,

"Yours very truly,

"(Signed) KUHN, LOEB & CO."

Upon consideration of the proposition of Kuhn, Loeb & Co., and upon motion duly made and seconded, it was

Resolved, That this Company will and does hereby accept the proposition of Messrs. Kuhn, Loeb & Co., as contained in their communication to this Company, dated the 4th day of February, 1901, and now submitted to this Committee.

Further Resolved, That, for the purposes of meeting present and future financial requirements of the Company, and for such lawful corporate purposes as may hereafter be determined by the Board of Directors or Executive Committee of this Company, this Company will create an issue of gold bonds to run for a term of ten years, to be known as "First Lien Convertible Four Per Cent. Gold
113 Bonds," to be coupon bonds, with provision for registration, all to be dated on the first day of May, 1901, to bear interest at the rate of 4% per annum, payable semi-annually on the first days of

May and November in each year, both principal and interest being payable in the City of New York, in the gold coin of the United States of America, of the present standard of weight and fineness, without deduction for United States, State, County, or Municipal taxes, which the Company may be required to pay or to retain therefrom under any present or future law, and said bonds to be convertible at the option of the holders, on or at any time before May 1st, 1906, into the Common Stock of Union Pacific Railroad Company, at par, that is at the rate of ten shares of stock for each bond, with an adjustment of current or accrued interest and dividends as between the said bonds and the stock into which the same may be converted, and said bonds to be redeemable at the option of the Company at a premium of two and one-half per cent., on any interest day after said first day of May, 1906; that the total issue of said bonds for all purposes shall be limited to the aggregate principal sum of $100,000,000, and all of said bonds shall be equally secured by an indenture or deed of trust to a responsible Trust Company of the City of New York as Trustee, which said mortgage or deed of trust shall contain the full, usual and ordinary covenants and provisions for the security of railway bonds of like character, and shall embrace and cover the following, among other, properties and assets, namely: the unmortgaged lines of railway of this Company, and all or such
114 parts of the securities belonging to this Company and within its control as shall be agreed upon between this Company and the purchasers of, or guarantors of the subscriptions for said bonds or the initial issue thereof hereinafter provided for.

Further Resolved, That $40,000,000 First Lien Convertible Four Per Cent. Gold Bonds of this Company, of the issue which is authorized by the foregoing resolution, shall be offered to the holders of the Common and Preferred Stock of this Company for subscription, at par, with any necessary adjustment of interest, provided that the offer of the said bonds for subscription by the stockholders may be in such proportions to the outstanding shares of stock as will enable an easily practicable apportionment—for example, one bond may be offered for subscription to the holder of 50 shares of stock, and any balance of unsubscribed bonds remaining after such apportionment may be disposed of at par (less reasonable commission) in such way as shall be found most expedient, and that out of the payments made upon said subscriptions and the proceeds of the sale of said $40,000,000 of bonds this Company will pay for the 750,000 shares of the Capital Stock of the Southern Pacific Company, the specific acquisition of which is authorized by the preceding resolution.

Further Resolved, That whereas it is important to the Company to insure at once funds for present commitments and future requirements, that the sale of said $40,000,000, of bonds be definitely assured, and that pending the necessary proceedings for the creation of said bonds, such funds as may be necessary to meet such commit-
115 ments and requirements be available, Messrs. Kuhn, Loeb & Co. be and they are hereby requested and authorized to agree to

underwrite the subscription by the stockholders of this Company of said $40,000,000. of the First Lien Convertible Four Per Cent. Gold Bonds of this Company, and this Company hereby undertakes that it will pay to Messrs. Kuhn, Loeb & Co., or such syndicate as they may form, a commission of two and one-half per cent. upon said $40,000,000. of bonds, and to said Kuhn, Loeb & Co., for their individual services a further commission equal to two and one-half per cent. upon said $40,000,000. of bonds; provided, however, that if for any reason the stockholders of this Company should fail to confer the necessary authority for increasing the Capital Stock, and otherwise consummating the plan contemplated in these resolutions, then, at the option of the holders, the bonds above provided for, or such other evidences of debt as the Company may have issued in anticipation as against advances made to it, will become due and payable on July 1, 1901, upon not less than thirty days' notice to this Company, and, in such case, the syndicate is to refund one-half of the commission, namely one and one-fourth per cent.; the nature and extent of the security for said bonds and other evidences of debt to be subject to the approval of Messrs. Kuhn, Loeb & Co., and the form of the mortgage or other papers to the approval of their counsel, and Messrs. Kuhn, Loeb & Co. to have the option to take, upon like terms, any additional bonds of the same issue which this Company may hereafter issue prior to May 1, 1906.

Further Resolved, That the Chairman of this Committee
116 be and he is hereby authorized to communicate to Messrs. Kuhn, Loeb & Co., the acceptance on the part of this Company of their offer to sell 750,000 shares of stock of the Southern Pacific Company and the terms or substance of all resolutions adopted at this meeting, such communication of the Chairman to serve as this Company's undertaking to Messrs. Kuhn, Loeb & Co. in the premises.

Further Resolved, That the proper officers of this Company, under the direction of the Chairman of the Executive Committee be and they are hereby authorized and directed to take any and all action necessary or proper, or by the said Chairman deemed desirable, to carry out each and all of the foregoing resolutions, except in such respects as the execution of such resolutions is specifically entrusted to the Chairman.

Further resolved That, except as to the fundamental conditions of the new issue of bonds heretofore authorized—such as the maximum amount thereof and their rate of interest—discretion and latitude in the variation of the foregoing plan are hereby entrusted to the Chairman of this Committee, with power to carry out the general and substantial purposes of the plan in these resolutions contemplated as in his judgment may be practicable and desirable.

Further resolved That, pending final and complete action in the execution of said plan, temporary provision for any of the purposes expressed in these resolutions may be made by the Chairman of this Committee in the name and on behalf of this Company, through
117 the issue of any obligations or certificates of indebtedness of

this Company, or by the sale or by the pledge or other temporary disposition of such property and assets of this Company as may in his judgment be required for such purpose.

Thereupon, the following preamble and resolutions were unanimously adopted:

Whereas, this Company, by action of its Board of Directors and Executive Committee, has authorized an issue of $100,000,000 of Ten-Year Four Per Cent. Gold Bonds, to be known as "First Lien Convertible Four Per Cent. Gold Bonds," convertible at the option of the holders on or at any time before May 1, 1906, into the common capital stock of Union Pacific Railroad Company at par, that is at the rate of ten shares of stock for each bond, said bonds to be redeemable at the option of the Company at a premium of 2½ per cent. on any interest day after said first day of May, 1906, and to be secured by a first mortgage upon unmortgaged railway belonging to the Company, and by the pledge of securities owned by it and held in its treasury; and,

Whereas, $40,000,000, of said bonds, are to be underwritten and offered to the stockholders of Union Pacific Railroad Company at par; and,

Whereas, an increase of the common capital stock of the Company by the amount of $100,000,000 is required, and to this end an amendment of the Articles of Association or charter of this Company authorizing such increase of its common capital stock is necessary:

118 *Resolved*, That recommendation is hereby made to the stockholders of the Union Pacific Railroad Company that the following amendment of this Company's Articles of Association be adopted and made as and in the manner provided for by the laws of the State of Utah, viz:

AMENDMENT TO ARTICLES OF ASSOCIATION OF UNION PACIFIC RAILROAD COMPANY.

Know all men by these presents, That Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of One hundred million dollars ($100,000,000) amend its Articles of Association by substituting as Article 4 thereof, and in place of said article as originally and heretofore existing, the following:

ARTICLE 4. The amount of the capital stock of the said corporation shall be Two hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($296,178,700), which shall be divided into and represented by two million nine hundred and sixty-one thousand seven hundred and eighty-seven (2,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders. Of such capital stock, one million (1,000,000) shares of one hundred dollars ($100) each may be issued as preferred stock,

and one million nine hundred and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of one hundred dollars ($100) each may be issued as common stock.

119 Such preferred stock shall be entitled in preference and priority over the common stock of said corporation to dividends in each and every fiscal year at such rate, not exceeding four per cent. per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article.

Further Resolved, That a meeting of the stockholders of Union Pacific Railroad Company be, and the same is hereby, called to be held at the office of the said company at Salt Lake City in the State of Utah, on the 23d day of March, 1901, at 12 o'clock noon, for the purpose of considering and acting upon the proposed amendment of the Articles of Association of this Company increasing its common capital stock by the amount of $100,000,000, and of authorizing the issue and use of such additional stock, and of taking all suitable action in this behalf and in the premises, and that the books for the transfer of stock (both common and preferred) be closed for the purpose of the meeting, as well as for the purposes of the dividends already declared, at 12 o'clock noon, on February 23, 1901, and reopened at 10 A. M. on March 25, 1901.

Further Resolved, That the Secretary of this Company be, and he is hereby, authorized and directed to give and publish notice of the special meeting of the stockholders of this Company as required or provided by law or by the by-laws of this Company, and, in addition thereto, mail to each registered holder of stock of this Company at the closing of the books on February 23, 1901, a copy of this action.

120 Upon motion, duly made and seconded, it was unanimously *Resolved*, That this Board hereby approves the action of the Executive Committee as set forth and contained in the resolutions of said Committee now submitted to this Board, and that such action and every part thereof is hereby adopted as the action of this Board in the premises.

Mr. Schiff and Mr. Kahn were excused from voting, and did not vote upon the foregoing resolution.

Upon motion, duly made and seconded, it was unanimously

Resolved, That for the purposes of meeting the present and future financial requirements of the Company, and for such lawful corporate purposes as may hereafter be determined by the Board of Directors or Executive Committee of this Company, this Company will create an issue of Gold Bonds to run for a term of ten years, to be known as "First Lien Convertible Four Per Cent Gold Bonds," to be coupon bonds with provision for registration, all to be dated on the first day of May, 1901, to bear interest at the rate of 4% per annum, payable semi-annually on the first days of May and Novem-

ber in each year, both principal and interest being payable in the City of New York, in gold coin of the United States of America of the present standard of weight and fineness, without deduction for United States, State, County, or Municipal taxes which the Company may be required to pay or to retain therefrom, under any present or future law, and said bonds to be convertible, at the option of the holders, on or at any time before May 1, 1906, into the common stock of the Union Pacific Railroad Company, at par,
121 that is, at the rate of ten shares of stock for each bond, with an adjustment of current or accrued interest and dividends as between the said bonds and the stock into which the same may be converted, the said bonds to be redeemable at the option of the Company at a premium of two and one-half per cent. on any interest day after said first day of May, 1906; that the total issue of said bonds for all purposes shall be limited to the aggregate principal sum of $100,000,000, and all said bonds shall be equally secured by an indenture or deed of trust to The Mercantile Trust Company of the City of New York, as Trustee, or to such other responsible Trust Company of said City as shall be selected by the Executive Committee, which said mortgage or deed of trust shall contain the full, usual and ordinary covenants and provisions for the security of railway bonds of like character, and shall embrace and cover the following lines of railway of this Company, and the following securities owned by it and held in its Treasury:

The lines of railway to be covered by said mortgage are as follows:

The line of railroad, together with its appurtenances, formerly belonging to the Echo and Park City Railway Company, extending from its Junction with the main line of the Union Pacific Railroad at Echo, in Utah, to the terminus of said line at Park City, in Summit County, Utah, a distance of about 30.19 miles.

The line of railroad, together with appurtenances, formerly belonging to the Union Pacific, Denver, and Gulf Railway Com-
122 pany, and known as the Julesburg Branch, extending from Julesburg in the State of Colorado to La Salle in said State, a distance of about 151.53 miles.

The line of railroad, together with its appurtenances, formerly belonging to the Junction City and Fort Kearney Railway Company, extending from Junction City in the State of Kansas to Belleville in said State, a distance of about 88 miles.

The line of railroad, together with its appurtenances, formerly belonging to Kearney and Black Hills Railway Company, extending from Kearney in the State of Nebraska to Callaway in said State, a distance of about 65.72 miles.

The lines of railroad, together with their appurtenances, formerly belonging to the Omaha & Republican Valley Railway Company, and consisting of a line of railroad extending from Valley in Douglas County, Nebraska, southerly to Manhattan, with branch to Blue Springs and a branch from Valparaiso to Stromsberg in Nebraska; also a line extending from Columbus, Nebraska, to Norfolk, Nebraska,

with a branch line extending from Oconee to Albion, and a branch from Genoa to Cedar Rapids, Nebraska; also a line of railroad extending from Grand Island, Nebraska, to Howard, Nebraska, with a spur from Scotia Junction to Scotia, Nebraska, and a line extending from St. Paul in Howard County, Nebraska, to Loup City, in Sherman County, Nebraska, and also a line extending from Nantasket to Pleasanton in Nebraska, in all consisting of about 182.02 miles of railroad.

The line of railroad formerly belonging to the Salina and Southwestern Railway Company, with its appurtenances, extending from Salina, Kansas, to McPherson, Kansas, a distance of about 35.47 miles.

123 The line of railroad formerly belonging to the Solomon Railroad Company, together with its appurtenances, extending from Solomon, Kansas, to Beloit, Kansas, a distance of about 57.04 miles.

The line of railroad, together with its appurtenances, formerly belonging to the Union Pacific, Lincoln & Colorado Railway Company, extending from Salina, Kansas, by way of Oakley to Colby, Kansas, a distance of about 225.32 miles.

Total mileage about *1,135.51 miles.*

The securities owned by this Company and to be covered by said mortgage are as follows:

Oregon Short Line Railroad Co., Series A, Income Bonds	$6,591,000
Oregon Short Line Railroad Company, Series B, Income Bonds	14,590,000
Oregon Short Line R. R. Co.'s Capital Stock	27,337,650

Oregon R. R. & Nav. Co.'s Capital Stock:

Common Stock	7,649,800
Preferred Stock	9,855,500

Also such further bonds, stocks, and other securities and property now owned or hereafter acquired by this Company as this Company may, by action of this Board or of the Executive Committee, specifically pledge under said mortgage.

Upon motion, duly made and seconded, the following preamble and resolutions were unanimously adopted:

Whereas, This Company, by action of its Board of Directors
124 and Executive Committee, has authorized an issue of $100,000,000 of Ten-Year Four Per Cent. Gold Bonds, to be known as "First Lien Convertible Four Per Cent. Gold Bonds," convertible at the option of the holders on or at any time before May 1, 1906 into the common capital stock of Union Pacific Railroad Company at par, that is at the rate of ten shares of stock for each bond, said bonds to be redeemable at the option of the Company at a premium of 2½ per cent. on any interest day after said first day of May, 1906, and to be secured by a first mortgage upon unmortgaged railway belonging to the Company, and by the pledge of securities owned by it and held in its treasury; and

Whereas, $40,000,000 of said bonds, are to be underwritten and offered to the stockholders of the Union Pacific Railroad Company at par; and,

Whereas, an increase of the common capital stock of the Company by the amount of $100,000,000 is required, and to this end an amendment of the Articles of Association or charter of this Company authorizing such increase of its common capital stock is necessary:

Resolved, That recommendation is hereby made to the stockholders of the Union Pacific Railroad Company that the following amendment of this Company's Articles of Association be adopted and made as and in the manner provided for by the laws of the State of Utah, viz:

"AMENDMENT TO ARTICLES OF ASSOCIATION OF UNION PACIFIC RAILROAD COMPANY.

"Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws
125 of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of one hundred million dollars ($100,000,000) amend its Articles of Association by substituting as Article 4 thereof, and in place of said article as originally and heretofore existing, the following:

"ARTICLE 4. The amount of the capital stock of the said corporation shall be Two hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($296,178,700) which shall be divided into and represented by two million nine hundred and sixty-one thousand seven hundred and eighty-seven (2,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders. Of such capital stock, one million (1,000,000) shares of one hundred dollars ($100) each may be issued as preferred stock and one million nine hundred and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of one hundred dollars ($100) each may be issued as common stock.

"Such preferred stock shall be entitled in preference and priority over the common stock of said corporation to dividends in each and every fiscal year at such rate, not exceeding four per cent. per annum payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

126 *Further Resolved*, That a meeting of the stockholders of Union Pacific Railroad Company be, and the same is hereby, called to be held at the office of the said Company at Salt Lake City, in the State of Utah, on the 23rd day of March, 1901, at 12 o'clock noon, for the purpose of considering and acting upon the proposed amendment of the Articles of Association of this Company increas-

ing its Common Capital Stock by the amount of $100,000,000, and of authorizing the issue and use of such additional stock, and of taking all suitable action in this behalf and in the premises, and that the books for the transfer of stock (both Common and Preferred) be closed for the purpose of the meeting, as well for the purposes of the dividends already declared, at 12 o'clock noon on February 23rd, 1901, and reopened at 10 a. m. on March 25th, 1901.

Further Resolved, That the Secretary of this Company be, and he is hereby, authorized and directed to give and publish notice of a special meeting of the stockholders of this Company as required or provided by law or by the by-laws of this Company, and, in addition thereto, mail to each registered holder of stock of this Company at the closing of the books on February 23, 1901, a copy of this action.

Q. I show you Complainant's Exhibit 18. Is that a certified copy of a resolution of the Board of Directors of the Union Pacific Company adopted January 31, 1901, for financing the Union Pacific matters?

A. Yes.

127 Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 18 (I. C. C. record, Millar Exhibit 26).

Complainant's Exhibit 18 is as follows:

COMPLAINANT'S EXHIBIT 18. (Millar.)

UNION PACIFIC RAILROAD CO.

(Certified Copy.)

(DIRECTORS, *Jan. 31, 1901.*)

Securities of other Companies.

The general subject of making financial provision for contemplated acquisitions of securities of other companies, and for branches and extensions of this Company's system, and the subject of protecting the properties of the separate companies embraced in the system, and of unifying the operation of the several lines constituting the system, were considered and discussed at length, and, upon motion duly made and seconded, it was

Resolved:

1. That reference be and it is hereby made to the Executive Committee, with full power, of the subject of making immediate provision for present and future financial requirements of the Company, including provisions for financing acquisitions, now or hereafter contemplated in the interest of this Company, of securities of any other company or companies, and including full power to conduct and provide for all measures, proceedings, and actions to carry out

128 such acquisitions; and among the measures which may be so taken for said purpose, or for any of the purposes expressed

in these resolutions, the Executive Committee is hereby authorized to provide for the issue and negotiation of bonds and obligations of this Company, in an amount not exceeding $100,000,000. Said Committee may determine the terms and period, or periods, of said bonds and the rate of interest, not to exceed four per cent., which the same shall bear; and for the purpose of securing the payment of the principal and interest of said bonds, as the same shall mature, the Executive Committee may authorize the making, execution, and delivery by this Company of a mortgage, deed of trust or pledge, upon such terms, conditions, and trusts as said Committee may determine, of lines of railroad, franchises, stocks, bonds, assets, and properties of any kind belonging or which may belong to this Company.

2. That any such new bonds which may be issued by this Company may be made convertible at any time, at the option of the holders, into the common stock of this Company, and the Executive Committee may take any and all steps necessary and considered by it proper to provide for such increase of the authorized issue of this Company's common stock as will enable such conversion of all such new bonds as may be authorized for issue and negotiation by this Company.

3. That, pending such final and complete action as may be determined by the Executive Committee and taken by this Company in the premises, temporary provision for any of the purposes herein expressed may be made by the Chairman of the Executive Com-
129 mittee, in the name and on behalf of this Company, through the issue of any obligations or certificates of indebtedness of this Company, or by the sale or by the pledge or other temporary disposition of such property and assets of this Company as may in his judgment be required for such purposes.

4. That all matters touching the financial and operating relations between this Company and any and all other companies of the system are hereby referred to the Executive Committee, with full power; and said Committee is hereby authorized to provide in its discretion for settlement of accounts between said companies and the acquisition of any property and any assets of any other of said companies, and for any lease or operating agreements, and for any control or use of the properties and assets of said other companies that said Committee may deem advisable, and upon such terms, conditions and guarantees as said Committee may determine or approve.

Q. I show you Complainant's Exhibits 19 to 29. Are these exhibits certified transcripts from the record books of the Board of directors, stockholders and executive committee of the Union Pacific and Short Line companies, as they purport to be—certified by you?

A. Yes, sir.

Mr. Severance. I offer in evidence the following:

Complainant's Exhibit 19 (I. C. C. record, Millar Exhibit 27); Complainant's Exhibit 20 (I. C. C. record, Millar Exhibit 28); Complainant's Exhibit 21 (I. C. C. record, Millar Exhibit 29); Complainant's Exhibit 22 (I. C. C. record, Millar Exhibit 30);

Complainant's Exhibit 23 (I. C. C. record, Millar Exhibit
130 31); Complainant's Exhibit 24 (I. C. C. record, Millar Exhibit 32); Complainant's Exhibit 25 (I. C. C. record, Millar Exhibit 33); Complainant's Exhibit 26 (I. C. C. record, Millar Exhibit 34); Complainant's Exhibit 27 (I. C. C. record, Millar Exhibit 35); Complainant's Exhibit 28 (I. C. C. record, Millar Exhibit 36); Complainant's Exhibit 29 (I. C. C. record, Millar Exhibit 37).

Complainant's Exhibit 19 is as follows:

COMPLAINANT'S EXHIBIT 19. (Millar.)

UNION PACIFIC RAILROAD COMPANY.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *Dec. 13, 1906.*)

Equipment Association Organization.

The Chairman stated that in his opinion it was advisable to have a corporation formed for the purpose of purchasing equipment to be used by this Company and its allied lines, the intention being that the Equipment Company should take title to the rolling stock and then lease it to the various associated companies, or at all events should hold the title thereto until such rolling stock should be distributed among the said companies; that, pursuant to this plan, he had heretofore caused a corporation to be organized under the laws of the State of Utah, known as "Union Pacific Equipment Association," with an authorized capital stock of $100,000, and had caused the
entire amount of this stock to be subscribed for account of
131 Union Pacific Railroad Company as follows: W. H. Bancroft, 996 shares; P. L. Williams, W. S. McCornick, E. Buckingham, and C. J. McNitt, 1 share each; that under the laws of Utah it was necessary that 10 per cent of these subscriptions should be paid in in cash at the time of the organization of the Company, and that he had directed the Union Pacific Railroad Company's treasurer to pay this sum, namely, $10,000 into the treasury of Union Pacific Equipment Association, which had been done.

On motion, duly made and seconded, it was unanimously

Resolved, That the action of the Chairman of the Executive Committee in causing the organization of Union Pacific Equipment Association under the laws of the State of Utah, with a capital stock of $100,000, and in causing the said stock to be subscribed for account of this Company, and in directing that 10 per cent. thereof be paid in cash; and the action of the treasurer of this Company in paying $10,000 into the treasury of Union Pacific Equipment Association upon said subscriptions be and the same is hereby ratified, approved, and confirmed.

Further resolved, That the treasurer of this Company be and he is hereby authorized and directed to pay into the treasury of said Union Pacific Equipment Association the remainder of said subscriptions, namely, the sum of $90,000 when and as the same shall be called by the Board of Directors of said Union Pacific Equipment Association.

132 Complainant's Exhibit 20 is as follows:

COMPLAINANT'S EXHIBIT 20. (Millar.)

UNION PACIFIC RAILROAD COMPANY.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *Dec. 13, 1906.*)

Pacific Fruit Express Company Organization.

The Chairman stated that the contract between this Company and Armour Car Lines with reference to the transportation of fruit and other perishable freight, contained a provision authorizing the termination thereof upon six months' notice from either party, and that the latter had given notice of its intention to terminate such contract; that he was advised that under the Interstate Commerce Act as amended Railroad Companies are required to provide refrigerator cars and to show the charges for such cars and for the service of refrigeration, ventilation, etc., in their tariffs, and to include such charges in their freight bills; that under the circumstances it seemed advisable for this Company and the Southern Pacific Company to provide for the incorporation of a Company, whose stock should be taken by them, to acquire and furnish them and their allied lines refrigerator cars required by them, and to take over and carry on the business of furnishing cars for traffic originating upon their lines which require refrigeration and ventilation, and of attending to the icing and ventilation of such cars; and that, pursuant to this plan, he had heretofore caused a corporation, known as "Pacific
133 Fruit Express Company" to be organized under the laws of the State of Utah, with an authorized capital of $12,000,000, and had arranged with W. H. Bancroft to subscribe for 11,996 shares, and P. L. Williams, D. E. Burley, J. A. Reeves, and F. H. Knickerbocker each to subscribe for 1 share, of such capital stock, and that such subscriptions had been made for account of Union Pacific Railroad Company and Southern Pacific Company each to take one-half of the shares so subscribed for. He further stated that, under the laws of the State of Utah, it was necessary that 10 per cent. of the authorized capital stock should be paid in in cash at the time of the organization of the company, and that he had directed the treasurer of the Union Pacific Railroad Company to pay that amount, one-half of it to be repaid to said company by the Southern Pacific Company.

The Chairman further stated that, in furtherance of this plan, he had some time ago authorized the purchase for account of said Pa-

cific Fruit Express Company of 6000 refrigerator cars at a cost of $1700 each, amounting in the aggregate to $10,200,000, some of which cars were about ready for delivery, and it was hoped that the others would be delivered by the time or very soon after the expiration of the contract with Armour Car Lines Company under the notice heretofore given; and he further stated that, in order to provide the Pacific Fruit Express Company with the funds necessary to pay for such cars, it should issue its stock from time to time, and the Southern Pacific Company and Union Pacific Railroad Company each should take one-half of such stock when and as issued at par.

The Chairman further stated that it might be necessary
134 or advisable to admit some other railroad companies as stockholders of said Pacific Fruit Express Company, but that this could be done later by the sale by the Southern Pacific Company and Union Pacific Railroad Company of portions of the stock so taken by them to such other railroad companies.

On motion, duly made and seconded, it was unanimously

Resolved, (1) That the action of the President of this Company in causing the incorporation and organization of Pacific Fruit Express Company under the laws of the State of Utah, with an authorized capital stock of $12,000,000 and in arranging for the subscription on account of this Company for 6,000 shares of such capital stock, and for the payment into the treasury of said Company of 10 per cent of the authorized capital stock, be and such action is hereby ratified and approved.

Resolved, (2) That the President of this Company be and he is hereby authorized to subscribe and pay for and receive, or to arrange for the subscription and payment for and receipt of, one-half of the remaining capital stock of said Pacific Fruit Express Company, from time to time, as issued by said Company, pursuant to the recommendation of the Chairman, as above set forth.

Resolved, (3) That this Company, as a subscriber to the capital stock of said Pacific Fruit Express Company, hereby assents to the purchase by said company of 6000 refrigerator cars at a cost of $1700 each, amounting in the aggregate to $10,200,000, as above stated by the Chairman of this Committee.

135 Complainant's Exhibit 21 is as follows:

COMPLAINANT'S EXHIBIT 21. (Millar.)

OREGON SHORT LINE R. R. CO.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *March 13, 1903.*)

Authority to Sell Southern Pacific Stock.

The Chairman reported that the 900,000 shares of the capital stock of the Southern Pacific Company, sold to this Company in accord-

ance with the resolution adopted by this Committee on March 11, 1903, had been delivered to this Company.

Upon motion, duly made and seconded, it was unanimously

Resolved, That the Chairman be and is hereby authorized to sell and dispose of all or any part of the shares of stock of the Southern Pacific Company held by this Company at not less than its cost to this Company, upon such terms and conditions as he may deem advisable.

136 Complainant's Exhibit 22 is as follows:

COMPLAINANT'S EXHIBIT 22. (Millar.)

OREGON SHORT LINE R. R. CO.

(Certified Copy.)

(EXECUTIVE COM. *Mar. 11, 1903.*)

(Southern Pacific.)

Purchase of Southern Pacific Stock.

There was presented to the meeting a certified copy of a resolution adopted by the Executive Committee of the Board of Directors of Union Pacific Railroad Company, offering to sell to this Company, upon the terms and conditions set forth in said resolution, certain shares of the capital stock of the Southern Pacific Company, which resolution is as follows:

"On motion, duly seconded, the following preamble and resolution were unanimously adopted:

Whereas the sale of certain securities to Oregon Short Line Railroad Company authorized by resolutions adopted by the Board of Directors of this Company on February 26, 1902, has not been consummated with reference to the 900,000 shares of the capital stock of the Southern Pacific Company, and it is desired that as respects said shares the sale thereof shall be had upon terms modified and fixed as herein provided; and

137 Whereas Oregon Short Line Railroad Company has consented that the sale be so made and consummated,

Resolved, That this Company sell to Oregon Short Line Railroad Company 900,000 shares of the stock of the Southern Pacific Company, for the sum or price of $55,428,183.38, and that in partial payment for such purchase price this Company accept, at their par value, 162,814 shares of the common capital stock of Oregon Railroad & Navigation Company, the balance of said purchase price, upon the settlement of the accounts between this Company and the Oregon Short Line Railroad Company, to be paid by the issue to this Company of obligations of the Oregon Short Line Railroad Company bearing four per cent interest and payable on demand.

Further Resolved, That the proper officers of this Company be and they are hereby authorized to arrange and carry out such sale."

"I, Alex. Millar, Secretary of Union Pacific Railroad Company, do hereby certify that the foregoing is a true copy of a preamble and resolution duly adopted by the Executive Committee of the Board of Directors of said Company at a meeting of said Committee held on March 11, 1903.

Attest:

[SEAL.] ALEX. MILLAR,
Secretary."

Upon motion, duly made and seconded, it was unanimously

Resolved, That this Company hereby accepts the offer made to it by Union Pacific Railroad Company to sell to this Company 900,000 shares of the capital stock of the Southern Pacific Company upon the terms and conditions set forth in said offer.

138 *Further Resolved*, That the proper officers of this Company be and they are hereby authorized and empowered to take such action, execute such instruments, and execute, deliver, or receive such securities and obligations, as may be necessary or proper to carry out and complete such sale.

Complainant's Exhibit 23 is as follows:

COMPLAINANT'S EXHIBIT 23—(Millar.)

OREGON SHORT LINE R. R. CO.

(Certified Copy.)

(DIRECTORS. *Nov. 12, 1903.*)

(S. P. Co.)

Sale and Purchase of Southern Pacific Stock.

The Chairman reported that, in pursuance of a letter received from Mr. Wm. Rockefeller, dated November 5, 1903, and submitted to the Board, he had closed the transaction in respect of the 300,000 shares of the capital stock of the Southern Pacific Company, and that the officers of the Company had paid the principal amount involved, together with interest and commission;

Wherefore, on due consideration and discussion, and on motion duly made and seconded, it was

Resolved, That the action of the Chairman in the transactions with Mr. Rockefeller relating to said stock of the Southern Pacific Co. be in all things adopted, ratified and approved.

139 Complainant's Exhibit 24 is as follows:

COMPLAINANT'S EXHIBIT 24—(Millar.)

UNION PACIFIC RAILROAD CO.

(Certified Copy.)

EXECUTIVE COMMITTEE, *March 11, 1903.*

Release of S. P. Stock from First Lien Mtge.

On motion, duly seconded, the following preamble and resolutions were unanimously adopted:

Whereas, by Article Twelfth of this Company's First Lien Mortgage and Deed of Trust, dated April 15, 1901, to the Mercantile Trust Company, as Trustee, it is provided among other things that this Company has the right at any time or times, by resolution of its Board of Directors or Executive Committee to require the said Trustee to deliver to this Company fully discharged from the lien and trusts of said mortgage, any and all shares of the capital stock of the Southern Pacific Company pledged with the said Trustee upon the delivery to the said Trustee, in substitution therefor, of certain securities in said Articles mentioned, such substitution to be upon the basis of valuation in said article fixed; and

Whereas, this Company desires to secure the delivery to it, fully discharged from the liens and trusts of said mortgage, 495,140 shares of the capital stock of the Southern Pacific Company, and to deliver to the said Trustees, in substitution therefor, the following described securities named in said Articles, viz.: 162,814 shares of the par value of One Hundred (100) dollars each, of the common capital stock of the Oregon Railroad & Navigation Company; $8,476,000 par value, of the Income B Bonds of the Oregon Short Line Railroad Company.

Resolved that the Mercantile Trust Company, the Trustee of this Company's First Lien Mortgage and Deed of Trust, dated April 15th, 1901, be and it is hereby required to deliver to this Company, fully discharged from the lien and trust of said mortgage, 495,140 shares of the capital stock of the Southern Pacific Company pledged with said Trustee under said mortgage, and to accept, in substitution therefor, the following described securities mentioned in Article Twelfth of said mortgage, and which, by the terms of said article, may be received by said Trustee in substitution for the shares of the capital stock of the Southern Pacific Company, viz.: 162,814 shares of the par value of One Hundred (100) Dollars each, of the common stock of the Oregon Railroad & Navigation Company; $8,476,000, par value, of the Income B Bonds of the Oregon Short Line Railroad Company, which said bonds are stamped or to be stamped as follows:

"With the consent of the owner and holder of this bond the 162,814 shares of the common capital stock of the Oregon Railroad & Naviga-

tion Company pledged with the Trustee of the mortgage referred to in said bond have been fully released from the trusts of said mortgage and delivered to the Oregon Short Line Railroad Company."

Further Resolved, that the proper officers of this Company
141 be and they are hereby authorized and empowered to execute such instruments and take such action as may be necessary or proper to carry out the foregoing resolution.

Complainant's Exhibit 25 is as follows:

COMPLAINANT'S EXHIBIT 25. (Millar.)

UNION PACIFIC R. R. COMPANY.

(Certified Copy.)

EXECUTIVE COMMITTEE. *March 11, 1903.*

Release of Southern Pacific Stock from First Lien Mtge.

On motion, duly seconded, the following preamble and resolution were unanimously adopted:

Whereas by Article Twelfth of this Company's First Lien Mortgage and Deed of Trust, dated April 15th, 1901, to the Mercantile Trust Company as Trustee, it is provided, among other things, that this Company shall have the right, by resolution of its Board of Directors or its Executive Committee, to require said Trustee to deliver to the Railroad Company, fully discharged from the lien and trusts of said mortgage, any and all securities pledged and deposited under said mortgage upon the delivery to the Trustee of a certified copy of a resolution of the Board of Directors or Executive Committee of this Company, calling upon the Trustee to make such delivery or release, and specifying the securities to be withdrawn,
142 and upon the payment by the Railroad Company to the Trustee in cash or in bonds issued under said mortgage, taken at their face value, of an amount equal to and at the rate of the valuation attributed or affixed to the securities so withdrawn; and

Whereas the valuation attributed or affixed to the capital stock of the Southern Pacific Company pledged under said mortgage is fifty (50) per cent of the par or face value thereof; and

Whereas by Article Thirteenth of said mortgage it is provided among other things, that all bonds issued thereunder and converted by the holders into common stock of this Company and cancelled shall be available to this Company, at their face value, as payment for securities withdrawn at the valuation mentioned in Article Twelfth of said mortgage; and

Whereas bonds issued under said mortgage, in the par amount of $12,743,000 have been converted by the holders thereof into common stock of this Company, and this Company desires to deliver said bonds to the Trustee of said mortgage for destruction, and to receive

the release from the terms and provisions of said mortgage of such an amount of the capital stock of the Southern Pacific Company pledged thereunder as by the terms of said mortgage is deliverable against said bonds;

Resolved, that the Mercantile Trust Company, the Trustee of this Company's First Lien Mortgage and Deed of Trust, dated April 15, 1901, be and it is hereby required to deliver to this Company fully discharged from the lien and trust of said mortgage 254,860 shares of the capital stock of the Southern Pacific Company pledged under said mortgage upon delivery to said Trustee of $12,743,000 face value, of bonds issued under said mortgage and converted by the holders into common stock, together with all unpaid coupons pertaining thereto.

143 Complainant's Exhibit 26 is as follows:

COMPLAINANT'S EXHIBIT 26. (Millar.)

UNION PACIFIC RAILROAD CO.

(Certified Copy.)

DIRECTORS, *Feb. 26, 1902.*

Sale of Stocks to Oregon Short Line.

Upon motion, duly seconded, the following resolution was unanimously adopted:

Resolved, that this Board hereby authorizes a sale to the Oregon Short Line Railroad Company of the securities below described owned by Union Pacific Railroad Company for the sum of $69,347,129.13, to be represented by certificates of obligation of the Oregon Short Line Railroad Company in the same general form and tenor as those heretofore executed by said Company in respect of the shares of the Northern Pacific Railroad Company, and in the respective amounts below set opposite the securities hereby authorized to be sold, namely:

900,000 shares of the stock of the Southern Pacific Co.	$51,796,179.13
76,681 shares of the common stock of the Oregon Railroad & Navigation Co.	7,668,400.00
98,825.50 shares of the preferred stock of the Oregon Railroad & Navigation Co.	9,882,550.00

and the following shares of stock, to be paid for in like man-
144 ner, in the sum of $1,000,000 (or in cash):

$5,000,000 face value, Occidental & Oriental Steamship Co.'s stock.

150,000, face value, Ogden Union Depot & Railway Company's stock.

2,400,000 face value, Pacific Express Company's stock.

5,000,000 face value, Union Pacific Coal Company's stock.

such sales to be subject to the lien of the First Lien Mortgage and Deed of Trust of this Company as to the securities above specified which are therein embraced, and deliveries of said securities to be made to the Short Line Company against its said certificates of obligation as such securities are from time to time released and discharged from the lien of said mortgage.

Further resolved: That the Executive committee and the proper officers of this Company be and they are hereby authorized to arrange and carry out such sale, and to make and deliver or receive on behalf of this Company such contracts, agreements, or indentures as may be advised by counsel for the purpose of carrying out such sale, and to take such steps and proceedings as may be necessary to withdraw from the trust of the First Lien Mortgage and Deed of Trust of this Company such of the above mentioned securities as are embraced therein, and to arrange for the investment of the proceeds resulting from the withdrawal of such securities or any other cash which may be in the hands of the Trustee.

145 Complainant's Exhibit 27 is as follows:

COMPLAINANT'S EXHIBIT 27. (Millar.)

UNION PACIFIC RAILROAD CO.

(Certified Copy)

(EXECUTIVE COMMITTEE, *March 11, 1903*).

Sale of Southern Pacific Stock to Short Line.

On motion, duly seconded, the following preamble and resolution were unanimously adopted:

Whereas the sale of certain securities to Oregon Short Line Railroad Company authorized by resolutions adopted by the Board of Directors of this Company on February 26, 1902, has not been consummated with reference to the 900,000 shares of the capital stock of the Southern Pacific Company, and it is desired that as respects said shares the sale thereof shall be had upon terms modified and fixed as herein provided; and

Whereas Oregon Short Line Railroad Company has consented that the sale be so made and consummated.

Resolved, that this Company sell to Oregon Short Line Railroad Company 900,000 shares of the stock of the Southern Pacific Company for the sum or price of $55,428,183.38, and that in partial payment of such purchase price this Company accept, at their par value, 162,814 shares of the Common Capital Stock of Oregon Railroad and Navigation Company, the balance of said purchase price upon the settlement of the accounts between this company and Oregon

146 Short Line Railroad Company, to be paid by the issue to this

Company of obligations of the Oregon Short Line Railroad Company bearing four per cent. interest and payable on demand.

Further resolved, that the proper officers of this Company be and they are hereby authorized to arrange and carry out such sale.

Complainant's Exhibit 28 is as follows:

COMPLAINANT'S EXHIBIT 28. (Millar)

UNION PACIFIC R. R. CO.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *March 11, 1903*).

Release of O. R. & N. Stock from Short Line Income B Mtge.

On motion, duly seconded, the following preamble and resolutions were unanimously adopted:

Whereas this Company is the owner of $14,779,000, par value of Collateral Trust Income B Bonds of Oregon Short Line Railroad Company, being all of the bonds issued and outstanding under said mortgage with the exception of $62,000, par value, thereof; and

Whereas there are deposited with the Trustee of said mortgage, as a part of the security for the bonds issued thereunder, 162,814
147 shares of the common capital stock of the Oregon Railroad & Navigation Company; and

Whereas the Oregon Short Line Railroad Company desires to obtain the release by the Trustee of said Income B Mortgage of the shares of the common stock of the Oregon Railroad and Navigation Company held by said Trustee,

Resolved, that this Company, as owner of $14,779,000, par value, of the Collateral Trust Income B Bonds of the Oregon Short Line Railroad Company, does hereby consent to the withdrawal from said mortgage of the shares of stock of the Oregon Railroad and Navigation Company deposited with the Trustee thereof, and the Trustee of said Mortgage be and it is hereby requested to release said stock from said mortgage and deliver the same to Oregon Short Line Railroad Company.

Further Resolved, that the proper officers of this Company be and they are hereby directed to cause the Income B Bonds owned by this Company, together with the coupons annexed thereto to be stamped as follows:

(Stamp for Bond)

With the consent of the owner and holder of this bond the 162,814 shares of the common capital stock of the Oregon Railroad and Navigation Company pledged with the Trustee of the

Mortgage referred to in said bond have been fully released from the trusts of said mortgage and delivered to the Oregon Short Line Railroad Company.

(Stamp for Coupon)

Security partially released. See bond.

148 Complainant's Exhibit 29 is as follows:

COMPLAINANT'S EXHIBIT 29. (Millar.)

UNION PACIFIC RAILROAD CO.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *July 17, 1902.*)

Correspondence with Kuhn, Loeb & Co. re Oregon Short Line Participating Bonds.

The Chairman submitted certain correspondence between himself and Messrs. Kuhn, Loeb & Co., which correspondence is as follows:

"NEW YORK, *July 16, 1902.*

MESSRS. KUHN, LOEB & CO.
27–29 Pine Street, New York.

DEAR SIRS: The Oregon Short Line Railroad Company has decided to create an issue of Oregon Short Line Four Per Cent. and Participating Twenty-five year Gold Bonds, redeemable at the option of the company on any semi-annual interest day at one hundred two and one-half and accrued interest. These bonds are to be secured by the pledge and deposit with a New York Trust Company, subject to an indenture of trust, of ten shares of the Common Stock of the Northern Securities Company for every $1,000 face value of such bonds, and the holders of the bonds are to be entitled for each year, beginning with 1906, to any dividends in excess of four per cent. per annum which shall be paid for such year upon such deposited stock.

149 "The Union Pacific Railroad Company will become the owner of a large amount of the above-mentioned bonds, and proposes, before July 25, 1902, to offer to its stockholders the privilege of subscribing for such bonds to a face amount equal to fifteen per cent. of the par amount of the stock which they respectively hold, at ninety (90) and accrued interest, under the terms of an offer of subscription of which a draft is submitted herewith.

"In order to insure the necessary funds to provide for present commitments and future requirements, I am instructed by the Executive Committee of the Union Pacific Railroad Company to request you to agree to purchase, or form a guaranty syndicate which shall

agree to purchase, at said price of ninety and accrued interest, upon the terms of said offer of subscription, such part of $31,000,000, of said bonds as may not be subscribed for by the stockholders upon the proposed offering.

"I should be obliged if you would state the terms upon which you will agree to make such purchase or undertake the formation of a Syndicate for the purpose.

Yours truly,

(Signed) E. H. HARRIMAN,
Chairman of Executive Committee."

"NEW YORK, *July 17, 1902.*

E. H. HARRIMAN, Esq.,
Chairman, Executive Committee, Union Pacific Railroad Company, 120 Broadway, City.

150 DEAR SIR: Referring to your letter of yesterday's date, we beg to advise you that we will undertake, upon the terms stated below, to form a guaranty syndicate which will agree to purchase at ninety (90) and accrued interest, upon the terms of the proposed offer of subscription to the stockholders of your company, such part of $31,000,000, of Oregon Short Line Four Per Cent. and Participating Twenty-five Year Gold Bonds as may not be subscribed for by the stockholders of your company upon such offering.

"1. Your company to pay to the syndicate which we form a commission of two and one-half per cent. upon the face value of said $31,000,000 of bonds.

"2. Our firm to have, as compensation for our services in forming the syndicate (in addition to any commission we may receive as syndicate participants), a commission of one per cent. upon the face value of said bonds, and a firm option to purchase all or any part of $20,000,000 additional of said bonds on or at any time before August 1, 1903, at ninety (90) and accrued interest less a commission of one per cent.

"3. The form of the bonds and of the trust indenture under which they are to be issued to be subject to the approval of ourselves and our counsel, counsel fees to be borne by your company.

Yours truly,

(Signed) KUHN, LOEB & Co."

"NEW YORK, *July 17, 1902.*

Messrs. KUHN, LOEB & Co.,
27–29 Pine Street, City.

151 DEAR SIRS—I beg to acknowledge receipt of your letter of this date, setting forth the terms on which you are prepared to purchase so many of $31,000,000 of Oregon Short Line Four Per Cent. and Participating Twenty-five Year Gold Bonds as are not subscribed for by the stockholders of the Union Pacific Railroad Company upon the proposed offering. The conditions stated by you

are satisfactory, and your offer is hereby accepted on behalf of the Union Pacific Railroad Company.

Yours truly,

(Signed) E. H. HARRIMAN,
Chairman of Executive Committee.

Upon motion, duly made and seconded, it was unanimously

Resolved, that the action of the Chairman as set forth in the correspondence between himself and Messrs. Kuhn, Loeb & Co., submitted to this meeting, be and the same is hereby in all things ratified, approved and confirmed.

Q. I show you a certified transcript of a resolution of the stockholders of the Oregon Short Line Railway Company, adopted October 14, 1903, and headed "Approval of San Pedro Agreements, Conveyances, etc:" is that a certified transcript of the record of the meetings of the stockholders of the Company of that date?

A. It is.

152 Mr. SEVERANCE: I offer that copy in evidence as Complainant's Exhibit 30 (Millar), the same being Exhibit 39 in I. C. C. record.

Complainant's Exhibit 30 is as follows:

COMPLAINANT'S EXHIBIT 30. (Millar.)

OREGON SHORT LINE R. R. CO.

(Certified Copy.)

(STOCKHOLDERS, *October 14, 1903.*)

Approval of San Pedro Agreements, Conveyances, Etc.

Upon motion, duly made and seconded, it was unanimously

Resolved, that all and singular the action of the Board of Directors and Executive Committee, as set forth or referred to in their respective minutes, be and they are hereby ratified, approved and confirmed.

Resolved further, that all the acts of E. H. Harriman, as Trustee, and the acts of each of the officers of this Company, in making the arrangements, contracts, and conveyances between E. H. Harriman, Trustee, and W. A. Clark, Trustee, the said Harriman and Clark, as Trustees, and the San Pedro, Los Angeles and Salt Lake Railroad Company, and each of the other arrangements, contracts, and conveyances made in connection with the settlement of controversies with said San Pedro Company, and to provide for acquiring and holding an interest in the capital stock of the said San Pedro Company, and

to provide for certain traffic arrangements, all of which are set forth in full in the minutes of the Executive Committee; in-
153 cluding the making, execution, and delivery of conveyances by the Oregon Short Line Railroad Company, the New East Tintic Railway Company, the Utah & Pacific Railroad Company, the Utah, Nevada & California Railroad Company, and by W. H. Bancroft, as Trustee, to the San Pedro, Los Angeles & Salt Lake Railroad Company; and also including the making of assignments of the capital stock of the New East Tintic Railway Company, the Utah & Pacific Railroad Company, the Utah, Nevada & California Railroad Company, and the Utah, Nevada & California Railroad Company in California, to the said San Pedro, Los Angeles & Salt Lake Railroad Company; and including also the execution and delivery of a certain agreement between W. A. Clark, trustee, for himself and as Trustee, as the party of the first part, and E. H. Harriman, as trustee, as party of the second part, and the Farmers' Loan & Trust Company, as party of the third part, and the assignment and delivery to said Farmers' Loan & Trust Company of the stocks in said agreement specified; and also in executing a certain agreement between said W. A. Clark and E. H. Harriman, as Trustees, and the said San Pedro, Los Angeles and Salt Lake Railroad Company, dated June 3, 1903, providing for the loan of certain capital stock of the said San Pedro Company, to be pledged as therein provided, and all of the acts of the said E. H. Harriman, as Trustee, done or performed, and all of the acts of each and every officer of this Company required or deemed necessary to be done to fully perform and execute the terms and conditions of each of said contracts and arrangements; including that certain contract of July 9, 1902, made between W. A. Clark and E. H. Harriman, and each and every one of them, be and the same are hereby ratified, approved and confirmed.

154 Q. Will you get the contract of 1902, between Mr. Harriman and Mr. Clark, and referred to in this resolution?

A. Yes. This contract [Millar Exhibit 52, I. C. C. record] reads as follows:

This agreement made and entered into this ninth day of July, 1902, by and between William A. Clark, hereinafter designated as Clark, Trustee, for his own account and upon account of his associates, who are, with himself, owners of approximately seventy per cent of the capital stock of the California Improvement Company hereinafter called the California company, and of the capital stock of the Empire Construction Company, hereinafter called the Empire company, and who own or control, through stock or otherwise, the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter called the San Pedro company, and Los Angeles Terminal Land Company and Los Angeles Terminal Railway Company, as party of the first part, and Edward H. Harriman, hereinafter designated as Harriman, Trustee, as trustee for the Oregon Short Line Railroad Company, hereinafter called the Short Line company, or such com-

pany or companies as he may declare parties to said trust, party of the second part, witnesseth:

Whereas, said California company is a corporation existing under the laws of the State of Illinois having an issued capital stock of $2,599,000, but no funded or other debt, and is the owner of all the capital stock of the said Los Angeles Terminal Land Company in the amount of $300,000, and is also the owner of all the capital stock of the said Los Angeles Terminal Railway Company in the amount of $3,000,000, all of which capital stock of said two last named
155 companies is now in the treasury of said California company; and the said California company also owns 25,000 shares of the capital stock of the San Pedro company in the aggregate amount of $2,500,000 par value, which stock of said San Pedro company is now issued to and held by William A. Clark and R. C. Kerens in trust for the stockholders of said California company, as their interests may appear; said capital stock of all said companies being divided into shares of $100 each; and also owns and claims the right to receive and obtain from said San Pedro company, to be delivered to W. A. Clark and R. C. Kerens as Trustees for its stockholders as their interests may appear, $2,500,000 par value, of the first mortgage bonds of said San Pedro company when the same shall be hereafter issued; and

Whereas, all of the railroad, franchises, rights of way, terminal facilities and railroad property, and all other property, real, personal and mixed, acquired by the Los Angeles Terminal Railway Company, has been by said company sold and conveyed to the San Pedro company; and

Whereas, the Empire Construction Company is a corporation of the State of Utah organized for the purpose of providing for the financing, construction and equipment of the railroad of said San Pedro company, with a capital stock of $1,000,000 divided into shares of $100 each, par value, all of which capital stock has been subscribed for and has been fully paid up and issued; and

Whereas, said William A. Clark, for himself and his said associates in whose behalf he now owns or directly controls approximately seventy per cent of the capital stock of
156 the California company, the Empire Construction Company and the San Pedro company, and the remainder of said capital stock being approximately thirty per cent of said capital stock of said companies, is owned, held or controlled by others not directly represented by said Clark; and

Whereas, the assets of said Empire company consist of its claims against, and contracts with, the said San Pedro company for money advanced, work done and material furnished on account of the improvement and acquirement of railroad property for said San Pedro company; and

Whereas, the San Pedro company is the owner of the railroad, equipment, rolling stock, terminal properties, station grounds, and all real, personal and mixed property formerly owned by the Los

Angeles Terminal Railway Company, and also owns certain other railroads, railroad properties, franchises, rights of way, road beds, stations, station grounds, water stations, equipment, rolling stock, tools, machines, machinery, supplies and other property procured for and intended to be used as a part of the railroad property of the said San Pedro company, and situated in the states of California, Utah and Nevada, all of which property is free and clear of any debts, incumbrance or charges except the indebtedness to the said Empire company, and its promise to execute and deliver, when
157 issued, its said first mortgage bonds in the aggregate par amount of $2,500,000 to William A. Clark and R. C. Kerens, Trustees for said stockholders of said California company, as aforesaid; and

Whereas, the said Los Angeles Terminal Land Company is the owner of certain real estate situated in Los Angeles County, California, including a tract of real estate situated on or near the harbor of San Pedro in said county and state, all of which property of said Los Angeles Terminal Land Company is free and clear of all incumbrances, liens and claims of every kind; and

Whereas, said Short Line company is the owner of and controls and operates a system of railroads generally described as follows:

A line of railroad extending from Granger, Wyoming, to the western boundary of said state, thence across the State of Idaho and to a terminus at the town of Huntington, Oregon, with branch lines connecting therewith;

Also a line of railroad extending from Salt Lake City, Utah, northerly through Ogden, Utah, to the northern boundary of the state of Utah, and thence North across the State of Idaho to a terminus at Silver Bow, Butte and Garrison, in the State of Montana, with branch lines connecting therewith; the line between McCammon and Pocatello being common to both said lines;

Also a line of railroad extending from Salt Lake City, Utah, southerly through Juab to Milford and Frisco, Utah, together with
158 a branch line extending from Lehi Junction into the Tintic Mining District, and the branch lines connecting therewith, and also a branch line known as the Terminus line, together with various controlled, owned and auxiliary lines of railroad in the above named states, and the States of Nevada and California.

The Short Line company, through ownership of capital stock, also owns and controls the railroads of the Utah & Pacific Railway Company, the Utah, Nevada & California Railroad Company (in Nevada), and the Utah, Nevada & California Railroad Company in California, and the new East Tintic Railway Company; and

Whereas, the said railroads of the Short Line company are operated in harmony with and as connections of the railroads of the Union Pacific Railroad Company extending from its terminus near Ogden, Utah, easterly through the States of Utah, Wyoming, Colorado and Nebraska to a terminus at Council Bluffs, Iowa, and extending from Cheyenne, Wyoming, to Denver, Colorado, and thence east-

erly through the State of Kansas to a terminus at Kansas City, Missouri, with branch and auxiliary lines in the States of Utah, Colorado, Kansas and Nebraska; and said lines of railroad of the Short Line company are also operated in connection with a certain line of railroad of the Southern Pacific Company commencing at Ogden, Utah, and extending westwardly through Utah and Nevada, and into California and beyond; and

Whereas, the San Pedro company and the Short Line company, and its auxiliary companies, under their respective charters each have power to construct a line of railroad between Salt Lake
159 City and San Pedro Harbor in Southern California, via Los Angeles; and

Whereas, the parties hereto desire to provide for the establishment, construction, ownership and operation of a line and system of railroad between said terminii by using therefor a part of the lines of railroad now owned or controlled by the Short Line company, and all the railroads and properties of the San Pedro company now owned by it or owned in its interest or for its use, and by connecting said several lines either by the construction of a new line or by securing leasehold or trackage rights over other lines of railroad to so connect said lines, and by means thereof to make one connected through line of railroad between said terminii, to the end that the same may constitute a new through transportation line for the use of the business of said San Pedro company and said Short Line company and their connections, and for the carriage of business which may originate on or be destined to points on or beyond their respective lines, or which may be delivered to them, or either of them by connecting railroads, and for the carriage of business between stations on their respective lines, and between all points on or beyond their respective lines, as well as to all points on or beyond the lines of railroad owned or operated by the connections of said Short Line Company, or said San Pedro company, as aforesaid, upon through tariffs to be jointly made and lawfully published and upon just and fair divisions of through rates and charges upon interchanged business.

Now therefore, for the purposes aforesaid and to accomplish the same the parties hereto have covenanted and do
160 hereby mutually covenant and agree to and with each other as follows:

ARTICLE FIRST.

SECTION 1. The said William A. Clark, for himself and as Trustee for his said associates, in consideration of the premises and of the undertakings of said Edward H. Harriman, as Trustee as aforesaid, hereby covenants and agrees to and with the said Edward H. Harriman, as Trustee as aforesaid, as follows:

That he will sell at the prices defined in section 2 hereof, and within six months after the date hereof cause to be assigned and delivered to said Harriman as such Trustee, or otherwise as provided

by Section 4 of this article, an equal undivided half interest in approximately seventy per cent. of the capital stock of each of the companies below named, that is to say:

(a) An undivided half interest in said approximately seventy per cent of the capital stock of the California Improvement Company held by said Clark and his associates as aforesaid, and through the medium of said stock an undivided half interest in said approximately seventy per cent of $2,500,000 par value of the first mortgage bonds of the said San Pedro Company by it agreed to be issued and delivered to said William A. Clark and R. C. Kerens, Trustees as aforesaid.

(b) An equal undivided half interest in said approximately seventy per cent of the outstanding capital stock of said San Pedro company owned by said Clark and his associates but held in the names of
161 Clark and Kerens, Trustees, and one-half of the outstanding qualifying shares issued to the names of the present stockholders of said company, about sixteen in number.

(c) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Empire Construction Company.

(d) An undivided half interest in said approximately seventy per cent of the capital stock of the Los Angeles Terminal Railway Company.

(e) An equal undivided half interest in said approximately seventy per cent of the said capital stock of the Los Angeles Terminal Land Company;

And that he will endeavor to secure all of the remainder of the stock of said several companies to and for himself and his associates as to one undivided half thereof and to and for said Harriman, Trustee, as to the other undivided half thereof, and at prices satisfactory to the parties hereto as hereinafter provided.

SECTION 2. In consideration of the foregoing the said Harriman as Trustee as aforesaid undertakes to buy an undivided half of said approximately seventy per cent of said outstanding capital stock of each said California company and said Empire company, and to pay therefor amounts to be determined as follows: For such of said stock as is sold to him by said Clark individually he shall pay, and said Clark shall receive payment at the amount and rate which the same cost the said Clark, with four per cent interest thereon from the time he acquired the same, less any amounts which the said
162 Clark shall have received directly or indirectly as dividends or profits from said companies or in connection with said stock; provided, however, that if no dividends or profits have been so received the entire earnings of said properties since the purchase of the stocks thereof by said Clark shall have been applied or used in the operation, betterments or extensions of the said properties, or shall now be in the treasury of the said companies; and that as to the stock the undivided half of which is so purchased by said Harriman, as Trustee, from the associates of said Clark, the prices and condi-

tions of sale shall be the same as above provided for the purchase of the said Clark's individual stock as above provided, unless the parties hereto shall hereafter otherwise agree.

SECTION 3. The said Harriman, as Trustee, further covenants and agrees that he will join with said Clark, Trustee, in the purchase at prices satisfactory to both parties hereto, of the remaining outstanding approximately thirty per cent of said stocks, and that the same when so purchased for joint account of said Clark and himself as such Trustees shall be transferred and assigned to and held jointly in the names of himself and said Clark as hereinafter provided, or to and held in the name of a trust company as trustee as in Section 4 hereof provided, it being the intention of this agreement that the said Clark and his associates, and the said Harriman, as Trustee as aforesaid, as such Trustees, shall own each an equal undivided half of all of the capital stocks of all of the above named companies.

SECTION 4. It is hereby agreed that all of said capital
163 stock in which an undivided half interest as aforesaid shall be purchased by said Harriman, Trustee, under the provision of said Sections 1, 2, and 3, hereof shall be transferred upon the books of said several companies either to "William A. Clark, Trustee for himself and his associates, and Edward H. Harriman, as Trustee," and that all of the capital stock of the San Pedro Company now outstanding, so to be held by joint title as above provided, shall, unless the parties hereto otherwise agree, be in like manner transferred to and stand upon the books of said companies in the names of said Clark and Harriman, Trustees, together with all of the stock of the San Pedro company which shall be hereafter issued, and as the same shall be issued, and shall be represented by certificates in the joint names of "William A. Clark, as Trustee for himself and his associates, and Edward H. Harriman, as Trustee," and each of the parties hereto shall have the possession and custody of certificates representing one-half in number and par value of said stock when so transferred to the parties hereto as aforesaid, and neither party hereto shall in any manner dispose of said holdings of the said capital stock of the said California company, or said Empire Company, or of said San Pedro company, or any part thereof, or any interest therein, for the full period of ten years after the opening for business of said through line of said San Pedro company as in this agreement provided, without first obtaining the consent of the other party hereto, nor at any time without giving said other party hereto the right to purchase such
164 holdings, or interest therein, so offered for sale, on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years the said then jointly held stock and the certificates thereof may be, and shall be, at the request of either party hereto, divided between said Harriman and Clark as Trustees according to their respective interests; *provided*, however, that if the parties hereto shall agree upon a trust company to be the holder of said certificate of stock, as trustee for the said "William A. Clark, Trustee, for himself and his

associates, and Edward H. Harriman, as Trustee," all of the said several shares of stock and certificates representing the same referred to in this section shall be transferred upon the books of the said several corporations to said trust company as trustee, and certificates duly issued to it therefor as trustee, to be held by it in trust for the parties hereto, in accordance with and subject to the terms of an agreement to be executed between the parties hereto and the said trust company concerning the holding of said shares.

The said last named agreement shall, among other things, provide first, that said trust company shall issue to the parties hereto certificates of interest running to the said "William A. Clark, Trustee, for himself and his associates, and Edward H. Harriman, Trustee," jointly, each party hereto to have possession of certificates representing one-half in number of the shares and one-half in par value thereof, which may be deposited with the said trustee, and second, that said trust company will, from time to time, when jointly requested by the said "William A. Clark, Trustee, for himself and his associates, and Edward H. Harriman, Trustee," give and issue
165 to such person or persons as said parties hereto may direct, a proxy or proxies authorizing the person or persons named in said proxy or proxies to vote any and all of said stock at any meeting of the stockholders of said several companies; and, third, that said trust company shall pay over to the parties hereto, or such persons as they shall jointly direct, any and all dividends, whether of stocks, bonds, moneys or property of any sort belonging to any of said several corporations, and which may be paid to or received by said trust company in any manner by reason of its holdings of any of said capital stock as aforesaid, together with such other provisions as may be hereafter agreed upon touching instructions which may, from time to time, be given to said trustee jointly by the parties hereto, said certificates of interest above named to be held and possessed by the parties hereto, but neither party shall in any manner dispose of said certificates of interest, or any part thereof, or of any interest therein, before the full period of ten years after the opening for business of said through line of said San Pedro Company, as in this agreement provided, without first obtaining the consent of the other party hereto to such transfer, nor at any time without giving such other party hereto the right to purchase such holdings or certificates offered for sale on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company.

At the end of said period of ten years said certificates of interest may be surrendered by the parties hereto, or by the holders thereof to said trust company, which shall thereupon assign and de-
166 liver the said stock certificates so held by it, to the said holders of said certificates of interest, in number and par value of shares named in such surrendered certificates of interest, and said shares of stock may then be transferred upon the corporate books of said several companies accordingly. At any time thereafter said

certificates of stock issued jointly to said "Clark, Trustee and Harriman, Trustee" may upon demand of either party hereto be divided between them according to their respective interest, yet subject, however, to the right of either party hereto to purchase said stock from the other party hereto at the price and on the terms in this section hereinbefore provided.

SECTION 5. It is agreed by the parties hereto that pending the carrying out of this agreement no further stock of the California company or of the San Pedro company shall be issued.

SECTION 6. Upon the completion of the sale and purchase of the said one undivided one-half of the capital stock of said companies, now owned by said Clark, Trustee, will whenever requested by said Harriman, Trustee, cause one-half of the membership of the directorate of each of the several companies to be vacated, and will cause directors to be nominated and named by the said Harriman, Trustee, to be elected to the directorate to fill such vacancies in each and every of said several companies, but said Harriman, Trustee, appreciating the advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end disturbing as little as may be the present organization of said company until the through line of said San Pedro Company in this agreement
167 mentioned is completed and in operation, will not exercise the right herein given him to name one-half of the said boards of directors unless he shall deem the exercise of such right necessary to the protection of the interests which he represents.

SECTION 7. The contract relations between the said Empire Construction Company and the San Pedro company not having been definitely agreed to, it is mutually covenanted and agreed between the parties hereto that within six months from the date hereof a contract shall be entered into between the said Empire company and the said San Pedro company which shall be in terms satisfactory to the parties hereto.

SECTION 8. It is mutually agreed that in all matters pertaining to the construction, opening for business and operation of the railroad of the San Pedro Company, including the purchase of equipment, the making of contracts for construction and the purchase of material therefor, and any and all contracts establishing relations of trackage or traffic with other railway companies, the parties shall act jointly, and no such contracts or arrangements, or any of them, shall be made, nor any corporate action taken by said San Pedro company, the California company or the Empire company without the approval of both parties hereto, and that in all such matters each of the parties hereto may be represented by an agent or agents to be apointed by them respectively with power to act for and in the names of their respective principals, and the said parties shall also act jointly in naming and prescribing the accounting and other officers and agents to be engaged in the operation of said companies, and each
168 of them, and the auditor of said Empire company shall be a person selected by the said Harriman, Trustee, and upon the

request of either party hereto any of said officers or agents shall be removed.

SECTION 9. It is understood that pending the carrying out of the terms of this agreement said Harriman, Trustee, may by his agent or agents inspect and examine the corporate records, books, accounts, rights and franchises of each of said several companies.

ARTICLE SECOND.

SECTION 1. In consideration of the covenants of the said Clark, Trustee, for himself and his associates, and also on behalf of the San Pedro company, in this agreement written, the said Harriman, Trustee as aforesaid, covenants and agrees with said Clark, as Trustee, that he will in the time hereinafter stated, negotiate with said Short Line company, and obtain from said Short Line company the sale and lease to said San Pedro company of the property hereinafter mentioned as follows:

(PARCEL 1.) A conveyance from said Short Line company to said San Pedro company, by good and sufficient deed, free and clear of incumbrance, of all of the following described property: The line of railroad known as the Terminus branch of the Short Line railroad from a point or points beginning at the connection of said branch with the yards of the Short Line company to be agreed
169 upon when said yards are defined as hereinafter provided, in Salt Lake City, County of Salt Lake, State of Utah, and extending in a generally westwardly and southerly direction to a point near Terminus in the County of Tooele, State of Utah, together with a branch line of railroad extending from Saltair Junction to the salt works, in Salt Lake County, State of Utah, except that part of said line the right of way for which is to be surrendered to the United States, and also the partially completed railroad and right of way, surveys and maps thereof, and railroad property, other than equipment, acquired by the Short Line company for or used in connection with the construction of its proposed new line of railroad now under construction extending from a point of junction with said Terminus line above named southerly to a point known as Leamington Junction, upon payment therefor by said San Pedro company as hereinafter provided.

(PARCEL 2.) A conveyance from said Short Line company to said San Pedro company by a good and sufficient deed containing a covenant to save and protect that said San Pedro company harmless from the lien or charge of the Consolidated Mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, and from the liens of the Income A and Income B mortgages of said company, for all and singular the following described property: All the line of railroad extending from a point near Sandy and about ten miles south of Salt Lake City, Utah, to be hereafter definitely fixed by a description and agreement between the parties hereto, and running from said point southerly through Provo, Juab and Leamington to

Milford, Utah, and thence a further distance of about 17 miles
170 to a terminus of said line of railroad at Frisco, Utah, and also all those certain other branch lines of railroad owned by said Short Line company which extend into what is known as the Tintic district, and which are generally described as follows: A line extending from Lehi Junction to the Tintic district, together with all branches and interest in joint tracts connecting therewith.

(Parcel 3.) A lease from the said Short Line company for the term of ninety-nine years granting to said San Pedro company the general and common use for its sole and separate business in common with the Short Line company of that part of the main line or lines of the said Short Line company's railroad extending from the northerly yard limit point thereon Southerly through the City of Salt Lake for a distance of about ten miles south from the southern limits of said Salt Lake City to a point on said main line to be hereafter definitely fixed but which is to be so fixed as to admit the Short Line company and the San Pedro company to the unobstructed use of the side tracks and switches necessary or convenient for use of and access to the side tracks, switches and properties of either of said companies, or to any or all of the smelters or other industrial institutions now existing or that may be hereafter established upon or near to said main tracks, together with all side tracks, stubs, spurs, switches, crossovers, standing places for cars, stations, signals, buildings, coal chutes, shops, roundhouses, turntables, and every other facility or property used in connection with or appurtenant to the property or business of the Short Line Company between
171 said northerly yard limit and said point near Sandy about ten miles south of the southerly boundary of said Salt Lake City, as above indicated.

It is agreed that the lease to be executed by the Short Line company to the San Pedro company, providing for the said use of the properties of the said Short Line company from the north yard limit in Salt Lake City to the said point near Sandy, including the terminal facilities of the Short Line company in Salt Lake City, Utah, shall be upon the consideration that the San Pedro company shall pay, in monthly instalments a rental based upon a four per cent. interest charge upon an agreed valuation of said property, and the cost of any capital additions thereto hereafter made, apportioned between said Short Line company and said San Pedro company upon the basis of use, but with a fixed minimum proportion to be paid by said San Pedro company, and also a proportionate amount of the expense of maintenance, improvement and operation of said property, including taxes, special assessments and insurance, the amounts of which rental and other payments, and the rules for ascertaining the same, together with rules for governing extensions and betterments, and the cost, rental and use thereof, and rules governing the operation of said yard, shall be agreed to by the operating officials of said Short Line company and said San Pedro company subject to the approval of the parties hereto, and which shall then be in-

corporated in said contract of lease, together with all formal provisions usual to such contracts.

The said property, the use of which for its own separate business is let to the San Pedro company, shall be managed and
172 controlled by the Short Line Company, provided, however, that for cause upon demand of the San Pedro company, after thirty days written notice to be given to the general manager of the Short Line company by the San Pedro company, a competent superintendent for the same shall be jointly chosen by the respective presidents of the San Pedro company and the Short Line company, who shall be charged with the care, management and operation of said property, to the end that the rights and privileges of the said parties thereto under this agreement shall be fully secured and preserved. Said superintendent shall be removed or discharged upon reasonable notice upon the written demand of either party to said lease given to the other party.

(Parcel 4.) The Short Line company is the owner of all of the capital stock and first mortgage bonds of the Utah & Pacific Railway Company which owns a line of railroad extending from Milford, Utah, to the Nevada-Utah state line at a point known as Uvada, and said Short Line company owns all of the capital stock of the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada which owns a railroad extending from the Utah-Nevada State line, at the point aforesaid, southerly to Calientes in Lincoln County, Nevada, and a right of way and partially constructed road bed for a line of railroad extending from said Calientes to a point near Pioche in said Lincoln County, and also a right of way and partially constructed road bed for a line of road extending from said Calientes southwesterly across the State of Nevada to the Nevada-California state line; and said Short Line com-
173 pany also owns all of the capital stock of the Utah, Nevada & California Railroad Company in California a corporation of the State of California which claims or owns a right of way extending from the Nevada-California state line to a point on the railroad of the Santa Fe company near Ludlow, Cal., and other railroad properties; said Short Line company also owns all of the capital stock of the New East Tintic Railway Company, which last named company owns a line of railroad in the Tintic district.

The said Harriman, Trustee, undertakes and agrees to procure from the Short Line company an agreement to sell to the San Pedro company, upon payment of prices to be fixed as hereinafter provided, all of the capital stock and first mortgage bonds of each of the following named companies: The said Utah & Pacific Railway company; the said Utah, Nevada & California Railroad Company, the said Utah, Nevada & California Railroad Company in California, and the said New East Tintic Railway Company; and an agreement from the Short Line company that it will, upon the request of the San Pedro company, if necessary, act with the said San Pedro company in procuring from each of the said several com-

panies lastly above named, a cancellation of the first mortgage bonds and the release and satisfaction of the said first mortgages, and also in procuring conveyances to said San Pedro Company from each of said four companies above named, of all the railroad, franchises and other property owned by said companies, respectively, so as to vest the said San Pedro company with the full title to and owner-
174 ship in all of said railroads, franchises and other property in this paragraph mentioned.

(PARCEL 5.) The said Harriman, Trustee as aforesaid, undertakes and agrees that said Short Line Company will sell and convey to the San Pedro Company such a proportion of its equipment appropriate and proper for use upon and heretofore assigned to use upon its lines of railroad south of Salt Lake City above referred to, as may be determined between the chief operating officers of said companies, upon being paid therefor the value of said equipment as the same shall be found and determined by the joint action of the superintendent of motive power of the parties hereto, and said Clark as Trustee undertakes that said San Pedro Company will buy said equipment and pay for the same on the delivery thereof at the price so found and determined.

SECTION 2. The said Clark, Trustee as aforesaid, in consideration of the covenants and agreements of the said Harriman, as Trustee as aforesaid, as written in this article, hereby undertakes and agrees that he will negotiate with and obtain from said San Pedro company a covenant and agreement on its part that it will buy from the said Short Line company and pay for all of the properties referred to and described in this article as Parcels 1, 2, 4, 5, and that the value of the said railroads and properties to be conveyed by the Short Line company described in said parcels shall be ascertained and determined, except as to said equipment, in the following manner:
175 By a fair estimate of the value thereof to be agreed upon by the parties hereto, based upon the cost, which is to be the minimum factor and upon the earning power of the said railroads, franchises and properties, capitalized at four per cent per annum, respectively described in said several parcels in this article, and that the aggregate value of all of said several properties referred to in said several parcels shall constitute the purchase price thereof to be paid by the San Pedro company to the Short Line company upon making the conveyance, transfers and assignments as aforesaid.

Said agreement shall provide that said San Pedro company will and shall assume all the obligations of the Short Line Company to contractors and others in respect to the location, re-location, construction and reconstruction upon the premises described in Parcel 1 hereof, and will carry out, fulfil and perform all of the said Short Line company's obligations in respect to said work, and will use the said new work when completed as part of the San Pedro company's main line of railroad, and that said San Pedro company will accept said lease for the property described in Parcel 3 on the terms above written.

All said conveyances, assignments and transfers and said lease to be made and delivered, and considerations therefor paid, contemporaneously with the exchange of stock, and the execution of the agreement hereinafter mentioned, are to be accomplished within six months from the date hereof.

ARTICLE THIRD.

176 SECTION 1. The said Harriman, as trustee, further covenants and agrees that he will not negotiate with the Southern Pacific Company and if possible obtain from said company the right for the San Pedro company to use the tracks of the Southern Pacific company from the point of its junction with the tracks of the Southern California company at or near Colton, to the point of junction with the tracks of the San Pedro company at or near Riverside, at a rental that will not exceed four per cent. per annum on one-half the valuation of the property of the Southern Pacific company so used, and a share of the cost of maintenance thereof, including taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 2. The said Harriman, as Trustee, further covenants and agrees that he will negotiate with the Southern California Railroad Company, and if possible obtain from said company the right for the San Pedro company to use the tracks of the Southern California company from the point of its junction with the tracks of the Southern Pacific company at or near Colton, to the point of junction of its tracks with the tracks of the Santa Fe Pacific company at or near Barstow, at a rental not exceeding four per cent per annum on one-half the valuation of the property of the Southern California company so used, and a share of the cost of maintenance thereof, including the taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 3. Said Harriman, as Trustee, further covenants and agrees that he will not negotiate with the Santa Fe Pacific
177 Railway company, and if possible obtain from said company the right for the San Pedro company to use the tracks of the said Santa Fe Pacific company between Barstow and Ludlow, California, or other point of connection of junction with the proposed line of railroad of the San Pedro company, at a rental which shall not exceed four per cent per annum on one-half the valuation of the property of the said Santa Fe Pacific company so used, and a share of the cost of maintenance thereof, including taxes, apportioned upon the use of said tracks and property upon a wheelage basis.

SECTION 4. Each of the several trackage contracts referred to in this article may also contain provisions requiring the San Pedro company to pay to each of said lessors for water, fuel and other supplies, labor or material furnished to and for the sole use of the San Pedro company while upon the tracks of said several companies, and

also the usual conditions and agreements for payment by the San Pedro company to said several lessors for losses and damages to persons or property arising from the negligence or wrong doing of its sole employees.

ARTICLE FOURTH.

The parties hereto, as Trustees aforesaid, hereby covenant and agree to and with each other that the said San Pedro Company and the said Short Line company shall and will, on or before the date named in Section 2 of Article second hereof, enter into an
178 agreement for a term of ninety-nine years with each other concerning the new line of transportation and traffic substantially to the effect following:

(a) The said new transportation line shall consist of the line of railroad to be created, secured, constructed and operated under the charter and franchises of the San Pedro company. Its main line shall commence at the City of Salt Lake, Utah and run southerly via Garfield, Leamington, Milford, Calientes, and thence through the States of Nevada and California to a junction with the line of railroad of the Santa Fe Pacific company, and thence by trackage arrangements over the lines of the Santa Fe Pacific Company, the Southern California company and the Southern Pacific Company to a connection with the San Pedro company's line in California at Riverside, and thence via Los Angeles to San Pedro Harbor.

(b) But if for any reason any of said trackage arrangements referred to in Article Fourth cannot be obtained, then upon and along a line of railroad to be otherwise acquired or to be constructed by the San Pedro company in lieu thereof, making and constituting a through line of railroad from the City of Salt Lake to San Pedro Harbor via Los Angeles in California.

(c) The branch lines of said new through transportation line shall be the lines of railroad heretofore operated by the Short Line company and described in Parcel 2 above mentioned and the branch lines of the San Pedro company in southern California, and such other branch lines as may be constructed or acquired hereafter by said San Pedro company, it being understood that the San Pedro com-
179 pany shall not hereafter extend its main line of railroad as herein defined, or any branch lines of railroad, or construct or build any line of railroad, or aid any other company or companies in the construction or building of any line or lines of railroad, nor assist or advise in building or constructing any other line of railroad northward or into the territory northward of the parallel of Salt Lake City, Utah.

(d) Said agreement shall further provide that should conditions develop hereafter which require the construction of branch lines connecting with the said San Pedro company's road south of Salt Lake City the construction of such lines shall be subject to agreement before the commencement thereof; providing, however, that if either

party objects to the construction the other may build said branches and connect the same with the main line of said San Pedro company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not directly or indirectly invade the territory of the Short Line company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line company's road north of Salt Lake City. On the other hand it is agreed and understood that the Short Line company shall not build branch lines which will invade the territory of the San Pedro company south of Salt Lake City or divert business which would be naturally tributary to the San Pedro company's road south of Salt Lake City.

SECTION 2. The San Pedro company will, in said contract,
180 agree to construct the railroad from a junction on the line of the Santa Fe Pacific company's road above mentioned, near Ludlow, or some other agreed point on said line in California, to a connection with the Short Line company's present road at Calientes, Nevada, and that all of the line of railroad constructed, reconstructed or to be constructed by the San Pedro company, and which is to become a portion of the main line thereof, shall be constructed with not less than seventy-five pound rail, and shall be completed and equipped as first-class in every respect, the construction and equipment to be of a standard equal at least to that already adopted by the San Pedro company upon that portion of its road heretofore constructed in southern California.

SECTION 3. The Short Line company will in said contract undertake for itself and its connections, the Union Pacific Railroad Company, and the roads of the Southern Pacific company, to join with the San Pedro company in forming through lines of service necessary for the interchange of any and all business which can be carried over said Short Line and its connections in conjunction with said San Pedro company's road to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as are offered by any carriers competing for the same business.

SECTION 4. In said contract provision shall be made by the parties thereto for the adoption of classifications governing through or interchanged traffic, for the making of through and joint tariffs and
181 rates, and the maintenance thereof, and the publication thereof as required by law, and provision shall also be made for just and equitable divisions of all such agreed through rates and charges respecting all interchanged business.

SECTION 5. Said agreement shall also contain the following provision:

"It is agreed that the interchange of traffic by and between the San Pedro road on the one hand, and the Short Line company and the Union Pacific company on the other hand, as against any competitor of said Short Line company or said Union Pacific company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific company; and, in like manner, that the

interchange of traffic by and between said Short Line company and said Union Pacific Company on the other hand, and the San Pedro company on the other hand, as against any competitor of the said San Pedro company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro company:

"That is to say,

"Whereas, the value of the Short Line company of its lines in Utah south of Salt Lake City, the transfer of which to the San Pedro company is hereinbefore provided, consists largely of their relation as feeders of said Short Line company and said Union Pacific company, and, whereas, it is not practicable to capitalize the value to said Short Line and said Union Pacific company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line company and said Union Pacific company
182 for the loss which would result from the diversion to other carriers of the traffic moving to and from points on said lines in Utah south of Salt Lake City.

"Now, therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line and said Union Pacific company, and their respective connections, shall be forwarded exclusively, in so far as that may lawfully be done, by way of and over the lines of said Short Line and said Union Pacific company. In consideration whereof said Short Line and said Union Pacific company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro company, exclusively in connection with said San Pedro company against any and all said San Pedro company's competitors.

"Whereas, the owners of said Short Line and said Union Pacific company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, Cal., or to a connection with a railroad already constructed which would give entrance to Los Angeles and other points in Southern California; and, whereas, the value to said Short Line and said Union Pacific company of said projected line from Calientes to southern California consisted largely in the profit to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and
183 controlled by said Short Line and said Union Pacific company, or by persons or companies friendly to said Short Line and said Union Pacific company, of the traffic interchanged by points on the line of, or to be reached by way of, the line of said projected line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line and said Union Pacific company, or by companies friendly to them; and, whereas, by the sale of, or by the transfer by lease or purchase, to the said San Pedro company, of the lines of said Short Line company south of Salt

Lake City, Utah, and the Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah & Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between Calientes, Nevada, and Los Angeles, California, in favor of the line proposed to be built by the San Pedro company, the said Short Line and said Union Pacific company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California, which might be lawfully conducted in the interest of said Short Line and said Union Pacific company.

"Now, therefore, it is covenanted and agreed, in part consideration of the transfer to said San Pedro company of the ownership or control of the lines of the Short Line company south of Salt Lake City, in Utah, and of said Utah, Nevada & California Railroad between Calientes, Nevada and Uvada, and the Utah and Pacific Railway
184 between Uvada and Milford, Utah, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance to Los Angeles, Cal., as follows:

"To unite the roads now owned by said San Pedro company, or transferred to it by this instrument, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah, and Los Angeles, California, and other points in California and the roads of the Short Line and Union Pacific company so as to form a through line of transportation service between points in California on the said San Pedro company's roads and points east of Ogden, Utah, on or to be reached by way of the Union Pacific company's lines and its connecting railroad lines. It is further understood and agreed that in so far as it may lawfully be done and profitably, that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole or in part, the subject of competition by other carriers. To this end it is understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interest of said through line in the conduct of all traffic which may be lawfully, reasonably and profitably conducted by said through line against any and all competitors of said through line.

"But this obligation of preference is not to be understood
185 or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in this sub-division which shall be offered for transportation by other connecting carriers nor so as to require either party hereto to refuse or neglect to receive and duly forward in accordance with shipper's instructions any traffic for which the shipper thereof shall have given or tendered written instructions directing that said traffic be delivered for forwarding to destination to a connecting car-

rier other than a party hereto: provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties hereto shall not be less than those which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier in any device or practice whatsoever designed to, or which shall have the effect of giving said connection an advantage or preference over said through line or any part thereof in soliciting or carrying the business properly subject to carriage by said through line."

SECTION 6. Said agreement shall also contain the following provision:

"No arrangement, contract, covenant or agreement for shipment or carriage of persons or property shall be made, permitted or
186 suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy directly or indirectly any better rates or have any better divisions of through rates, or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party."

SECTION 7. Said agreement shall also contain the following provision:

"Nothing contained herein shall be construed as limiting the rights or provileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line company in respect to interchange of traffic each with the other."

SECTION 8. Said agreement shall also contain the following provision:

"Said Short Line company is bound for itself, and undertakes to secure a like obligation upon the part of the Union Pacific company and the roads of said Southern Pacific company to deal with said San Pedro company in the matter of interchange of traffic in respect to rates of charge for all traffic and the divisions of said rates and in respect to class and quality of service as they, respectively deal with each other or with the most favored connection, and not to discriminate in any respect in favor of each other or of any connecting line to the prejudice and disadvantage of said San Pedro company."

187 SECTION 9. Said agreement shall also contain the following provision:

"It is covenanted and agreed that said Short Line company and its connection, the Union Pacific Railroad Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines, and points on the line of said San Pedro company in Utah, for business which said Short Line Company or said Union

Pacific company might give to or receive from said San Pedro company, in competition with any and all other connections of said San Pedro company; provided, however, that on demand said Short Line company and said Union Pacific company shall join said San Pedro company in any through rates necessary to meet the rates offered by any competing through line for such business."

SECTION 10. Said agreement shall also contain the following provision:

"Each party hereto hereby covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or any of said other party's connections, in favor of any of the competitors of either of said parties, or in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service."

SECTION 11. Said agreement shall also contain the following provision:

"Neither party hereto shall or will agree with, or make any
188 convention with a competitor of the other party hereto in any respect designed to, or which shall have the effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto, subject to established divisions."

SECTION 12. Said agreement shall also contain the following provision:

"Said San Pedro company hereby covenants and agrees that it will not now or hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City, or in Nevada, upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line company at Salt Lake City."

SECTION 13. Said agreement shall also contain the following provision:

"Said Short Line company hereby further undertakes and agrees to negotiate with, and secure if possible, from said Southern Pacific Company, an undertaking and agreement on its part for the interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as said Southern Pacific Company has for the interchange of traffic with the Southern California Railroad Company.

"The San Pedro company covenants and agrees that it will
189 make a covenant or agreement with the Southern Pacific Company for its, (said San Pedro company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro company which is or may be subject to competition between said Southern Pacific Company

and said San Pedro Company, and that thereafter neither party shall change said rates without the consent of the other party, unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad."

SECTION 14. Said agreement shall also contain the following provision:

"The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train each way, over their respective lines, and over the lines of railroad of the Union Pacific company to its terminus at Council Bluffs, Iowa, and thence *via* its connections, if it can accomplish the same, between Council Bluffs, Iowa, and Chicago, Illinois, through to Los Angeles, California. Such joint through passenger service shall be so established and put in operation whenever either party hereto shall give to the other written notice of its desire so to do. When so established the trains necessary therefor shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design, and in all respects the equal or superior of that of competing lines.
190 Each party shall furnish its just quota in proportion to length of haul of such equipment. The time schedules for such joint passenger train shall be no greater in point of time than the shortest time of the trains of competing lines between the same points, and the time established shall be divided *pro rata* per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Either party hereto shall receive the through passenger trains of the other party upon delivery and dispatch the same regularly without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own line, and car mileage at usual rates shall be paid for all cars of either party used upon the the lines of the other in the joint business."

SECTION 15. Said agreement shall also contain the following provision:

"It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and that each party shall pay to the other the usual rates allowed for car service; that all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections, the Union Pacific Railroad Company and the Oregon Railroad & Navigation Company, *pro rata* per mile in proportion to the length of the haul performed by
191 each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis: *provided*, that neither party shall be required to perform any service

other than switching service in connection with the other party for less than one dollar per ton, except as may be mutually agreed upon from time to time. Joint through rates for business other than that which is subject to the competition of rival carriers, shall be divided *pro rata* per rate, that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties."

SECTION 16. Said agreement shall also contain the following provision:

"Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed cannot be located or arises from concealed or unknown causes the damages shall be jointly paid by the parties hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition."

192 SECTION 17. Said agreement shall also contain the following provision:

"It is further mutually covenanted and agreed by and between the parties hereto that all joint through passenger rates shall be divided in the following proportions:

"1. When the joint passenger rate is made of the sum of the published local rates of the parties, each party shall receive its local rate.

"2. If the through passenger rate shall be less than the sum of the two or more local rates, made less to meet competition, or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, and neither party shall in any division receive more than its published local tariffs."

SECTION 18. Said agreement shall also contain the following provision:

"Any difference that shall hereafter arise as to the meaning or the proper construction of this agreement, or any part thereof, or as to the performance of any of the covenants and agreements herein contained by either party, shall first be referred to the two presidents of the said parties for settlement, and to that end the party complaining shall deliver to the said presidents a concise written statement of the matter regarding which complaint is made. If the two presidents within thirty days after receiving such complaint, are unable to settle such difference so submitted, then the same shall, within thirty days thereafter be referred to a committee of the two boards of directors to be created as provided in this article. Notice of

193 the time and place of hearing thereof by said committee shall be given by them to the parties hereto at least ten days before

the same shall be heard. Each party may submit such evidence and statements as it may think proper for the consideration of such committee at such hearing, and the decision of such committee, when reduced to writing and signed by them or a majority of them, shall be binding upon the parties hereto, and such written decision shall thereafter be taken and held to be a part of this agreement."

ARTICLE FIFTH.

It is further agreed between the parties hereto that all contracts necessary to carry out the provisions of this agreement shall be formulated and entered into by the parties appropriate to such contracts, whether hereinabove expressly provided for or not.

It is understood and agreed that the execution of this agreement by the party of the second part is subject to ratification and approval by the Executive Committee of the Short Line Company, and that the party of the first part shall be furnished with evidence of such approval when the same shall have been given.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM A. CLARK,
In Trust for himself and his Associates.
EDWARD H. HARRIMAN,
As Trustee, as in above instrument recited.

194 Mr. SEVERANCE: I now offer in evidence Complainant's Exhibits 31 to 42 (Millar) inclusive, which are admitted to be copies of the originals, and the same may be used with the same force and effect as the originals. (Mr. Evarts assents to this.) These exhibits were Millar Exhibits 40 to 51 inclusive in the Interstate Commerce Commission record.

Complainant's Exhibit 31 (Millar) is Stock Trust Agreement between William A. Clark individually and as trustee, Edward H. Harriman as Trustee, and The Farmers' Loan & Trust Company.

Complainant's Exhibit 32 (Millar) is a Traffic Agreement between Oregon Short Line Railroad Company, San Pedro, Los Angeles and Salt Lake Railroad Company and Union Pacific Railroad Company.

Complainant's Exhibit 33 (Millar) is a Traffic Agreement between Southern Pacific Company and San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 34 (Millar) is a Deed, Leamington Cut-Off, Oregon Short Line Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 35 (Millar) is Guaranty of Union Pacific Railroad Company to Release Lien of Present and Future Holdings of Income A or Income B Bonds, and is an agreement made between the Oregon Short Line Railroad Company, San Pedro, Los Angeles and Salt Lake Railroad Company and Union Pacific Railroad Company.

Complainant's Exhibit 36 (Millar) is a Lease from the Southern Pacific Company and Southern Pacific Railroad Company to
195 San Pedro, Los Angeles and Salt Lake Railroad Company of the line from Riverside to San Bernardino.

Complainant's Exhibit 37 (Millar) is a Deed of Lines south of Salt Lake City: Oregon Short Line Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 38 (Millar) is a Deed of the Terminus Branch, Oregon Short Line Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 39 (Millar) is a Salt Lake Yard Contract between Oregon Short Line Railroad Company and San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 40 (Millar) is a Deed from Utah and Pacific Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 41 (Millar) is a Deed from Utah, Nevada and California Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

Complainant's Exhibit 42 (Millar) is a Deed from New East Tintic Railway Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

These are all offered in evidence.

196 Complainant's Exhibit 31 is as follows:

COMPLAINANT'S EXHIBIT 31. (Millar.)

WILLIAM A. CLARK, *Individually and as Trustee*, EDWARD H. HARRIMAN, AS TRUSTEE, and THE FARMERS' LOAN AND TRUST COMPANY.

STOCK TRUST AGREEMENT.

This agreement, made and entered into this 7th day of June, A. D. 1903, by and between William A. Clark, of the City of Butte, in the State of Montana, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, of Arden, New York, as trustee, as party of the second part, and The Farmers' Loan and Trust Company, a corporation created under the laws of the State of New York, hereinafter called the Trustee, as party of the third part, witnesseth:

ARTICLE I.

SECTION 1. The parties of the first and second parts, in consideration of the sum of one dollar to each of them in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the acceptance by the Trustee of the trust hereby created, do jointly and severally sell, assign, deliver and set over unto said Trustee
197 under the terms of this instrument, and to the successor in

trust, if any, of said Trustee, all and singular the following certificates of capital stock and the stock interest therein or thereby represented, viz.:

1. 25,990 shares of the capital stock of the California Improvement Company;

2. 10,000 shares of the capital stock of the Empire Construction Company;

3. 3,000 shares of the capital stock of the Los Angeles Terminal Land Company;

4. 250,000 shares of the capital stock of the San Pedro, Los Angeles and Salt Lake Railroad Company (including those held by the directors of said Railroad Company), subject to the pledge and deposit of all the foregoing shares with Kuhn, Loeb & Co., duly assigned in blank, as part of the collateral for a loan of $25,000,000 made by said Kuhn, Loeb & Co. to said Railroad Company, and in order to secure the transfer of which hereunder the said parties of the first and second parts have executed an order to said Kuhn, Loeb & Co. as follows:

NEW YORK, ----------, *1903.*

To Messrs. KUHN, LOEB & CO.:

There have heretofore been deposited and pledged with you under the terms of a certain Agreement dated June 3, 1903, between yourselves and the San Pedro, Los Angeles and Salt Lake Railroad Company, as part of the collateral security for the loan therein provided for, two hundred and fifty thousand shares of the capital stock
198 of the said San Pedro, Los Angeles and Salt Lake Railroad Company; all except directors' shares being owned by William A. Clark and Edward H. Harriman.

This is to authorize and direct you, upon the payment of the loan described in said Agreement with the interest thereon, and upon the satisfaction of the obligations therein contained, to deliver all of the said shares of stock to The Farmers' Loan and Trust Company, of the City of New York, to be held by said Trust Company under the terms of a certain Stock Trust Agreement dated June 7, 1903.

If hereafter you decline to make the additional loan described in said first mentioned Agreement, and are called upon to surrender the two-sevenths in par amount of said shares of stock as provided in said Agreement, this directs you to deliver the stock so to be surrendered to or upon the joint order of William A. Clark and Edward H. Harriman, their Executors and Administrators.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
By
——— ———, *President.*
and
——— ———, *Secretary.*
WILLIAM A. CLARK.
EDWARD H. HARRIMAN.

Notice of above direction accepted:
KUHN, LOEB & CO.

So soon as the said shares of stock so transferred hereunder shall be received by the Trustee, the same shall at once be transferred upon the books of said respective corporations into the name of the
199 Trustee, and all of the terms and conditions of this instrument shall at once attach thereto and all property in the said stock shall be deemed vested in the Trustee as fully and to the same extent, and with the same force and effect, as if actual transfer and delivery of said shares of stock had been, at the time of the execution of this instrument, duly made to the Trustee hereunder.

In case Kuhn, Loeb & Co. shall hereafter decline to make the additional loan of $10,000,000 provided for in their Agreement with said San Pedro Company, dated June 3, 1903, and shall surrender to the parties of the first and second parts two-sevenths in par amount of the capital stock of the San Pedro Company, the said parties of the first and second parts hereby covenant with each other that they will use the same or so much thereof as may be necessary as part of the collateral security to be given to some other lender who shall make a loan of not exceeding $10,000,000 to said San Pedro Company, and that, upon making said loan by said other lender, the parties of the first and second parts, will execute and deliver to said lender an order for the delivery of said shares of stock by said lender to the Trustee, in like form as said order hereinbefore set forth, requiring said lender, upon the payment or other satisfaction of the loan and lien under which said shares may be pledged to him, to deliver said stock to said Trustee for said account of said parties of the first and second parts as such Trustees; and that in all other respects any shares of stock so surrendered to them by said Kuhn, Loeb & Co. shall be deemed sold, transferred and delivered to the Trustee, and shall be subject to
200 and bound by all of the terms of this Agreement.

SECTION 2. The parties of the first and second parts further covenant and agree to and with each other, and to and with the Trustee, that from time to time, and when, individually or as Trustee, they shall or may hereafter jointly secure by purchase or otherwise any additional shares of the capital stock of either or any of said several Companies named in Section 1 of this Article, whether such stock be now issued or hereafter may be issued, they will immediately sell, assign, deliver and set over to the Trustee any and all such shares of stock, subject to all the terms and trusts of this agreement.

SECTION 3. The parties of the first and second parts further severally covenant and agree to and with each other, and to and with the Trustee, that in case either of the parties of the first or second parts or their respective *cestuis que trust* shall hereafter secure, by purchase or otherwise, any further or additional shares of capital stock of any of the said companies mentioned in Section 1 hereof, and not theretofore deposited with the Trustee, whether such capital stock be now issued or at any time hereafter be issued by any of said companies, such acquisition, however made, shall be for and upon their

joint account, at joint cost, and for the equal benefit and ownership of the parties of the first and second parts and their respective *cestuis que trust*, and that the same shall be, whether it be stock now issued or stock which may be at any time hereafter issued by any of the said companies, if, and when the cost thereof shall be borne or paid jointly by the parties of the first and second parts
201 hereto, in like manner immediately assigned, transferred and delivered to the Trustee, and shall be and become subject to the terms hereof. But if the other of said first party or said second party shall not, on demand of the party who made such acquisition, or for whom such acquisition was made pay one-half of the cost thereof to the party acquiring the same, then such party who has acquired the same, may, but not otherwise, hold and own such additional shares as his own, and free from the terms of this agreement and free from any claim of interest therein by any other party hereto.

SECTION 4. The parties of the first and second parts further covenant to and with each other, and to and with the Trustee, that in case they or either of them shall in any manner or at any time hereafter secure or acquire any of said additional shares of said capital stock in any of said companies, which is now issued or may hereafter be issued by any of said companies, he or they will immediately inform and advise each of the other parties hereto of the time, manner, terms and price at which such stock was secured or acquired, with an offer to subject the same to the terms of this agreement, and also that they will at once cause the Trustee to be fully informed of any increase in capital stock of any of said companies which may at any time hereafter be authorized or made, and of the terms and conditions upon which the same is provided to be issued or is issued.

SECTION 5. The Trustee shall HAVE AND HOLD all of the said shares of said capital stock of the each of the companies mentioned in Section 1 of this Article, and the certificates representing the same, and which are, on the execution hereof, delivered to said Trus-
202 tee, as well also as any and all such shares of capital stock mentioned in Sections 2 and 3 of this Article, which may hereafter be delivered to the Trustee, its successors or assigns, upon the trusts hereinafter specified, from and after the execution hereof and for the term of ten years from the day when the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company, or its successor, shall be opened for business from Salt Lake City, Utah, to San Pedro, California.

ARTICLE II.—*Directors' qualifying shares.*

Enough shares of capital stock in each of the said Companies mentioned in Article I. hereof, to qualify the directorate in each of them, shall be reserved from the disposition of said shares of capital stock hereinafter provided, and the same shall be assigned and transferred by the Trustee to the names of the persons selected to be or who shall be from time to time elected to such directorate. Such directors' qualifying certificates of shares, however, shall be at once assigned in

blank by said directors and be delivered to and held in the custody of the Trustee, to be used for said purpose, but subject to the terms of this instrument.

ARTICLE III.

The Trustee, its successors and assigns, shall cause all of the said shares of capital stock, (except those necessary to qualify the directors as aforesaid.) and all the certificates thereof mentioned in
203 Article I. hereof, as well as all other shares of capital stock which may at any time hereafter be delivered to the Trustee under this instrument, to be immediately and from time to time transferred to it as Trustee, upon the respective transfer books of the said several companies, and thereafter the Trustee shall be possessed of and hold all of the said stock and certificates as Trustee under this instrument, with full power to hold the same as the owner of the legal title thereto, but subject, as between the parties to this instrument and their assigns, to all the trusts in this instrument declared.

ARTICLE IV.

SECTION. 1. The Trustee shall issue "Certificates of Interest" against all of said shares of capital stock and the certificates of capital stock which may now be, or which may hereafter be at any time, issued by any of said several companies, and by or for the parties of the first and second parts deposited with, and assigned to the Trustee, to be and to become subject to the terms of this instrument, which said Certificates of Interest shall be issued by it to and in the names of "William A. Clark, Trustee, and Edward H. Harriman, Trustee," duly certified and issued under the hand of its proper officers, and entered upon correct books of record which shall be kept by the Trustee, showing the details of the issuance and transfers of such Certificates, in the usual manner and form of well organized corporations dealing with such matters.

204 SECTION 2. Said Certificates may be in substantially the following form:

THE FARMERS' LOAN AND TRUST COMPANY

CERTIFICATE OF INTEREST

IN

(Insert name of proper company.)

No. _____ _____ shares.

This Certificate of Interest is issued to _____, pursuant to the provisions of a certain Stock Trust Agreement dated June 7, 1903, made by and between William A. Clark, contracting for himself and as trustee for his associates, as party of the first part, Edward H. Harriman, as trustee, as party of the second part, and the undersigned, as party of the third part, and reference to said

Agreement, an original of which has been lodged with the undersigned, is hereby made.

This Certificate of Interest is based upon _____ shares of the capital stock of the _____ of the par value of one hundred dollars each, which have been sold, assigned, delivered and transferred to the undersigned as Trustee under said Agreement.

This Certificate is not negotiable and not transferable, except upon the written consent of William A. Clark, Trustee, and Edward H. Harriman, Trustee, in the form of transfer and consent endorsed on this Certificate, nor until this certificate shall be surrendered to the undersigned for cancellation, as provided by said Agreement.

The holder or holders of this Certificate of Interest is
205 and are entitled to receive the net proceeds (after paying the cost of collecting and disbursing the same, including the Trustee's fees) of any dividend or dividends declared or to be declared, and of any funds which may come into the possession of the undersigned as the holder or owner of any of the shares of capital stock of the said _____ Company in respect of which this Certificate is issued.

At the end of the full term of ten years from the day, on which the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company shall be opened for business from Salt Lake City, Utah, to San Pedro, California, the registered holder of this Certificate may surrender the same to the undersigned; and, upon payment of any sums due or to become due to the Trustee under the terms of said Agreement, shall be entitled to receive from the Trustee, Certificates in the name of such holder for the shares of capital stock in respect of which this Certificate was issued.

By the acceptance of this Certificate, the holder thereof shall be bound by all the terms and provisions of said agreement, dated June 7, 1903, as fully and to the same extent as if such holder were a party thereto and had duly executed an agreement to abide thereby; and no holder thereof, other than "William A. Clark, Trustee, and Edward H. Harriman, Trustee," whether the *cestui que trust* of said Clark, or of said Harriman, nor any other persons, shall have any interest, legal or equitable, in this Certificate, or in the shares of capital stock upon which the same is issued, unless or until
206 the said Clark, Trustee, and said Harriman, Trustee, shall have each in writing consented thereto.

When so assigned, this Certificate shall be transferred only upon surrender thereof to the Trustee and upon the execution by the transferee of an agreement in the form prescribed by the said Stock Trust Agreement.

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee*.

By _____

Attest:

_____

Secretary.

There shall be endorsed upon said Certificates of Interest a form of assignment substantially in the following form:

ASSIGNMENT.

For value received, ____ hereby sell, assign and transfer unto ---------- the within Certificate of Interest based upon ---------- shares of the capital stock of the ----------, and all of ---------- interest therein, and do hereby irrevocably appoint ---------- attorney to transfer said Certificate upon the books of The Farmers' Loan and Trust Company, with full power of substitution in the premises.

Dated

No such assignment shall become effectual to pass any title
207 to, or right or interest in the said Certificate, or in the shares of capital stock upon which the same is based, until there shall have been endorsed in writing thereon, a consent substantially in the following form:

"Consent is hereby given to the above assignment of this Certificate, and to the transfer thereof, to ----------.

"WILLIAM A. CLARK, *Trustee.*
"EDWARD H. HARRIMAN, *Trustee.*

"In presence of:
----------."

Nor shall such assignment or consent be received from any intended transferee by the Trustee for any purpose, until such intended transferee shall have executed and delivered to the Trustee, by endorsing the same upon such certificate so to be transferred, an undertaking in the following form:

"The undersigned accept this Certificate, subject to all the terms and conditions of the agreement dated June 3, 1903, therein mentioned, by which the undersigned agree to be fully bound as if a party thereto, and agree____ to hold all interest acquired thereby, and by any new Certificate of Interest, if any, issued in respect thereof under and subject to the terms of said Agreement."

Upon the due execution of all of which and the presentation thereof to the Trustee, it may, but not otherwise, cause such transfers to be made and entered of record.

SECTION 3. Said Certificates of Interest as to the shares of stock in each of said several Companies shall be issued and delivered to
208 the parties of the first and second parts in their joint names, in equal amounts, so that each of the parties of the first and second parts shall respectively receive from the Trustee, each one-half in number and one-half in par value of the capital stock in each of said Companies now, or from time to time, transferred or delivered to the Trustee, and in respect of which said Certificates of Interest may be issued.

SECTION 4. No transfer of any such Certificates of Interest shall be made by the Trustee upon its books or otherwise, unless such Certificates shall be first surrendered and returned to the Trustee for cancellation, and shall have been by it canceled; nor unless the same shall each bear endorsed thereon the written consent to such transfer signed by each of said parties of the first and second parts, nor until such proposed transferee shall in writing consent to all the terms of this instrument, and agree to be bound thereby as if a party thereto, and to be bound and limited by the terms and conditions written in and endorsed upon said Certificates of Interest.

SECTION 5. The Trustee may from time to time make such reasonable rules respecting the making and issuance of Certificates of Interest, and the transfer thereof, as it may find necessary; and upon the written request of all the holders of outstanding Certificates of Interest, it shall make, adopt and enforce any rule or regulation concerning the assignment or transfer of such Certificates of Interest,
209 which all of said holders of outstanding Certificates of Interest may so request.

ARTICLE V.

SECTION 1. The Trustee may collect any dividends paid or payable, declared or to be declared, by any of said Companies, and any funds due to any of them from any source whatever, in respect of the said shares of capital stock so held by the Trustee, and, shall immediately, upon such receipt and collection of any such dividends or funds, pay over any such dividends or funds to the parties of the first and second parts, or their successors or assigns, ratably and according to their respective holdings of said Certificates of Interest representing the stock upon which such dividends or funds has been paid as appears by the records of the Trustee, and may also pay over the like ratable proportion of any such dividends or funds to any registered holder of such Certificates of Interest, whose holding thereof was acquired by any assignment of such Certificates of Interest, with and upon the written consent of the parties of the first and second parts, and upon the said transfers, consent and undertaking, as provided by Section 4 of Article IV. of this Agreement.

SECTION 2. The Trustee will at any time, upon the written request of the parties of the first and second parts, or the successor in trust of either of them, issue to the persons jointly named by said parties of the first and second parts, or said successor, its proxy or proxies upon all of the shares of capital stock of each of said several Com-
210 panies then held by it and registered in its name, to be voted at any annual, special, adjourned or called meeting of the stockholders of any of the said Companies.

SECTION 3. At least sixty days before the day of the annual meeting of the stockholders of any of the said Companies, the parties of the first and second parts shall, in writing, either jointly or separately, notify the Trustee of the names of the persons to whom the

Trustee shall issue the proxy or proxies mentioned in Section 2 of this Article. If the names so notified to the Trustee are not identical, the Trustee shall transmit to each of the parties a copy of the said notice of the other party, and unless thirty days before the day of such annual meeting the parties of the first and second parts shall have lodged with the Trustee an agreement or consent to the names of the same persons to whom such proxies shall issue, it shall then be the duty of the Trustee, not less than twenty days before the day of such meeting of the stockholders, to call, in writing, upon each of the parties of the first and second parts to each nominate a number of persons, not more than one-half of the number of persons to be elected as directors at such meeting, and thereupon the Trustee shall issue its proxy or proxies to such person or attorney as it may select to appear at such annual meeting, and there to vote all the shares of capital stock in such Company so held by said Trustee, for directors thereof, one-half of the number of directors to be the persons so nominated to it for such purpose by each of the said parties of the first
211 and second parts, respectively. Any communication provided to be made hereby may be made between the parties or their duly appointed attorney by letter or by telegram sent at the expense of the trust. In case the number of directors to be chosen for any such Company shall be an odd number, then the President of the Trustee shall be elected as one of said directors, unless said parties of the first and second parts shall jointly nominate another person to be so elected, and the remaining directors shall be elected, one-half from the persons nominated for such office by the party of the first part, and one-half from the persons nominated for such office by the party of the second part.

SECTION 4. If the said parties shall include in their said nominations of persons to be voted for as directors by the Trustee, as provided for in Section 3 of this Article, the names of the same person or persons, the Trustee shall, by letter or by telegram, notify each of said parties of the first and second parts, of the fact of such double nomination, and in such case either of said parties may withdraw the name of the person so twice nominated and substitute the name of another person to be voted for by the Trustee or its attorney in fact; but in case either of said parties of the first or second parts shall fail to nominate some person in lieu of the person so nominated by both parties, then the President of the Trustee shall select some managing officer of the Trustee to be voted for as such director in lieu of one of said double nominations by one of said parties.

212 SECTION 5. In case it shall happen at any time while the capital stock of the said several Companies, or any of them, remains deposited with the Trustee, that the stockholders in any of said Companies shall be called at any regular or special meeting, to act upon any question other than the election of directors, the Trustee shall issue its proxy upon said capital stock to the person or persons whom the said parties of the first and second parts may jointly

request. In case the said parties shall not agree as to the person so to be appointed, the Trustee shall select some discreet and proper person to vote upon such question in such meeting in the manner and as the parties hereto may in writing request; and in case no such request shall be jointly made by said parties, then the Trustee shall vote upon such question upon the stock so held by it, in the manner and as the President of the Trustee shall determine.

SECTION 6. The initiative in all matters in this Article provided shall be taken by the parties of the first and second parts hereto, and the Trustee shall not be charged with any duty except as in this Article provided, in case of a failure of the said parties of the first and second parts to agree in direction to the Trustee as in this instrument provided.

ARTICLE VI.

SECTION 1. None of the stock held by the Trustee under the terms of this Agreement, and none of the Certificates of Interest
213 issued thereunder, shall, until the end of the full term of the ten years hereinafter created, be in any manner or for any purpose sold, assigned or transferred, or otherwise disposed of, nor shall any interest therein, or right thereto, legal or equitable, be sold, transferred or assigned or otherwise disposed of by either the party of the first or the party of the second part hereto, except upon the consent in writing of the other of said parties, first had and obtained and lodged with the Trustee; nor unless the party hereto desiring to effect such sale, assignment or transfer or other disposition shall have first offered the other of said parties hereto the right and opportunity to purchase the same stock certificates, interest, legal or equitable, or right, on as favorable terms, and such party shall neglect to avail himself of such opportunity for the space of thirty days.

SECTION 2. Nothing in this Article, however, shall be construed to prohibit either of the said parties of the first and second parts, respectively, from making and delivering to himself or to his *cestuis que trust*, or associates, receipts, or other instruments, in form negotiable or otherwise, hereinafter termed "Certificates of Interest," in respect of the number of shares of stock in each of said Companies which he has or which such associates or *cestuis que trust* have deposited under said trust, or with their said respective personal trustees under some agreement satisfactory to such personal trustee and to the owners of such capital stock so deposited with the said personal trustee; but such agreement or arrangement shall be so
214 made as to provide that none of the owners of such Certificates of Interest so issued by either one of the said personal trustees shall, by virtue of such ownership, or otherwise, in any manner interfere with the control, ownership, use, custody and possession of said third party of the capital stock so deposited by said personal trustee with the Trustee under this Agreement, nor shall any such arrangement or agreement charge the Trustee under this Agreement

with any duty to any holder of any such personal trustee Certificate, nor shall the party of the third part be required to recognize any such personal trustee Certificate in any manner, or for any purpose whatever.

SECTION 3. At the end of the term hereby created, the parties of the first and second parts covenant to and with each other and to and with the Trustee to surrender to the said Trustee any and all Certificates of Interest issued by the Trustee and respectively held by them, or either of them, and thereupon the Trustee may, and it hereby covenants and agrees to and with each of the other parties hereto that it will, upon the request of either of said other parties, assign the capital stock, or capital stock certificates represented by said surrendered Certificates of Interest, jointly to and in the names of the parties of the first and second parts, and shall deliver to each of the said parties of the first and second parts the certificates of capital stock in any of said several Companies which are represented by the Certificates of Interest issued against the said capital stock by the Trustee, and which shall be surrendered to the Trustee by said respective parties, or it may, upon a like surrender by the holders thereof, assign into the names of such holders of its Certificates of Interest and deliver to such holder or holders of its said Certificates of Interest the number of shares of capital stock in any of said Companies and in the par value in respect of which the Trustee had issued its said Certificates of Interest, provided that such holder or holders of said Certificates took and held the same under the terms and upon the written consents of the said parties of the first and second parts, and upon the other conditions provided for by this instrument; and upon such assignment and delivery, the said capital stock may be transferred upon the books of the said several companies into the names of such assignees. Upon any such assignment and delivery of said shares of capital stock by the Trustee to the holders of any Certificate of Interest issued by the Trustee, the Trustee shall not thereafter be charged with any duty or liability in respect of any of said capital stock or Certificate of Interest.

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SECTION 4. Each of the parties of the first and second parts covenants with the other, that any and all shares of stock and stock certificates received by him, under the terms of Section 3 of this Article, will not be sold or offered for sale at any time after receiving the same, until the other of said parties shall have been given the right to purchase such shares of capital stock on as favorable terms as the same or any part thereof are offered for sale or agreed to be sold, or sold, to any other person, firm or company; it being the intention of each of the parties hereto to give to the other a preferential right to purchase any of said shares of capital stock upon any sale or other disposition thereof.

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ARTICLE VII.

SECTION 1. In case the parties of the first and second parts, respectively, may desire to wind up the business, distribute the assets or

otherwise bring about a dissolution of the said California Improvement Company, the Empire Construction Company and the Los Angeles Terminal Land Company, or some of them, or for any other purpose to withdraw the shares of stock of any of said Companies from the trust hereby created, then upon the surrender of the Certificates of Interest issued by the Trustee in respect of the shares of the capital stock of any such Company, the Trustee may, and upon the joint request of the parties of the first and second parts, shall assign the said stock certificate and deliver the same to such person or persons as may be named in such request; and thereupon the Trustee shall not be further charged in respect to any stock in, or business of such Company, and this Agreement shall no longer affect the same.

Article VIII.

Section 1. The provisions of this Agreement shall be binding and in full force and effect from the date hereof, and for the further full term of ten years from the day on which the railroad of the San Pedro, Los Angeles and Salt Lake Railroad Company
217 shall be opened for business between Salt Lake City, Utah, and San Pedro, California; and the parties of the first and second parts covenant and agree that they will cause the San Pedro, Los Angeles and Salt Lake Railroad Company to certify to the Trustee the date at which it is so open for business, and that the said Certificate shall be conclusive as to the fact so stated.

Section 2. It is nevertheless agreed by all the parties hereto that this Agreement may at any time be modified, changed or abrogated, in whole or in part, upon the consent of all of the holders of record of the said Certificates of Interest issued by the Trustee, if and when the same is approved in writing by the Trustee.

Article IX.

Section 1. The parties of the first and second parts jointly and severally covenant and agree to and with each other, and with the Trustee, to indemnify it and to save and keep it harmless from any loss, charges or damages which the Trustee may incur by reason of its holding the legal title to or the ownership in and custody of the said several shares of capital stock in any of said several companies.

Section 2. They also covenant and agree to pay each one-half of the reasonable compensation to be paid to the Trustee for itself and for its agents, servants or attorneys, for anything done or to be done by them or any of them in the performance of the duties of the Trustee under the terms of this instrument, and any costs,
218 damages or expenses incurred by the Trustee in any suit or action which may be brought or conducted by any person having or claiming to have an interest in the subject-matter of the trust estate and in which the Trustee may be sued or if it elect in which it may voluntarily appear.

ARTICLE X.

SECTION 1. In case the said William A. Clark shall at any time die or resign as Trustee for his said *cestuis que trust*, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of Certificates of Interest, issued by said William A. Clark to himself and to the persons who deposited any of said capital stock with said Clark, may, by a majority vote of all shares represented in said Certificates, select some other person to be Trustee in lieu and in place of said William A. Clark; and, upon said selection being certified to said Trustee by the written certificate of the said holders of said Certificates, the *cestuis que trust* making such selection, the said person so selected in place of said Clark may execute the copy of said Agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions and matters be substituted for said Clark to all intents and purposes as if such person had been originally the party to this instrument instead of said Clark.

SECTION 2. In case the said Edward H. Harriman shall at any time die or resign as Trustee for his said *cestuis que*
219 *trust*, or if he shall for any reason be unable to discharge the duties of his trust, then the holder or holders of certificates of interest issued by said Edward H. Harriman in respect of said capital stock, may, by a majority vote of all of said certificates of interest, select some other person to be Trustee in lieu and in place of said Edward H. Harriman; and upon said selection being certified to said Trustee by the written certificate of the said holders of said Certificates, the *cestuis que trust* making such selection, the said person so selected in place of said Harriman may execute the copy of said Agreement in the custody of the party of the third part, and thereafter shall in all respects, rights, duties, privileges, conditions and matters be substituted for said Harriman to all intents and purposes as if such person had been originally the party to this instrument instead of said Harriman.

In testimony whereof, the said party of the first part and the said party of the second part have hereunto subscribed their names and affixed their seals; and the said party of the third part, for the purpose of signifying its acceptance of the trusts herein and hereby created, has caused these presents to be signed by its President, sealed with its corporate seal, and attested by its Secretary, the day and year first above written.

Signed in triplicate.

W. A. CLARK (L. S.)
W. A. CLARK *as Trustee* (L. S.)
EDWARD H. HARRIMAN, *as Trustee.* (L. S.)

THE FARMERS' LOAN AND TRUST COMPANY, *Trustee.*
[SEAL.] By E. S. MARSTON, *President.*
Attest:
SAM SLOAN, Jr. *Sec'y.*

220 Complainant's Exhibit 32 is as follows:

COMPLAINANT'S EXHIBIT 32. (Millar.)

OREGON SHORT LINE RAILROAD COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY.

TRAFFIC AGREEMENT.

This agreement, made and entered into this 18th day of June, 1903, by and between Oregon Short Line Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, hereinafter called the "Short Line Company," party of the first part; San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, hereinafter called the "San Pedro Company," party of the second part, and Union Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, hereinafter called "Union Company," party of the third part, Witnesseth:

Whereas, said Short Line Company formerly owned and operated certain railroads lying south of Salt Lake City, Utah, which it has conveyed or is about to convey to said San Pedro Company; and

Whereas, said Short Line Company owns and operates certain lines of railroad extending northerly from Salt Lake City,
221 Utah, to connections with the railroad of the Union Company at Ogden, Utah, and Granger, Wyoming, and to a terminus at or near Silver Bow, Montana, and to a connection with the railroad of the Oregon Railroad and Navigation Company at Huntington, Oregon, and various branch lines of railroad; and

Whereas, said Union Company owns and operates a railroad from its terminus near Ogden, Utah, easterly through the states of Utah, Wyoming, Colorado and Nebraska to a terminus at Council Bluffs, Iowa, and a branch line extending from Cheyenne, Wyoming, via Denver, Colorado, to Kansas City, Missouri, with many branch lines in the states through which its said main line of railroad passes; and

Whereas, said San Pedro Company owns and operates certain railroads in the State of California, including a line extending from San Pedro and Los Angeles through Pomona to Riverside in California to a connection with the railroad of the Southern Pacific Railroad Company, and is about to procure under the terms of a certain agreement with said Southern Pacific Railroad Company, and the Southern Pacific Company the right to operate its railroad from said last-named connection over the tracks of said Southern Pacific Railroad Company to a connection with the tracks of the Southern California Railway Company at San Bernardino, California, and is about to procure, under a certain agreement with the Southern California Railway Company the right to operate its railroad over the tracks of

said Southern California Company's railroad from said last-named connection to a connection with the Atchison, Topeka and
222 Santa Fe Railway at Barstow, and is about to procure, under a certain agreement with the Atchison, Topeka and Santa Fe Railway Company, the right to operate its railroad over the tracks of said Atchison, Topeka and Santa Fe Railway Company's railroad from said last-named connection to Daggett, in the State of California, and is now engaged in constructing or is about to construct, and will construct, own and operate a railroad from said Daggett to the Nevada-California state line, and from thence to Calientes, Nevada, to a junction with the railroad formerly of the Utah, Nevada and California Railroad Company which extends from said Calientes to the Utah-Nevada state line, and to a junction with the railroad formerly of the Utah and Pacific Railroad Company, and thence over the railroad formerly of said Utah and Pacific Railroad Company to Milford, Utah, to a junction with a certain railroad formerly of the said Short Line Company, and from said last-named junction on said railroad formerly of said Short Line Company via Leamington Junction and the railroad known as the Leamington Cut-Off to the west bank of Jordan River near the western limits of Salt Lake City, and thence under the terms of a certain agreement with said Short Line Company, dated June 18, 1903, over the tracks, terminal grounds and yards of said Short Line Company in Salt Lake City, as defined in said last-named agreement, to its northern terminus in Salt Lake City, Utah, together with other certain branch lines of railroad in Utah, which said railroads and branch lines of railroad lying northerly of Calientes, Nevada, have been or are about to be acquired by said San Pedro Company from said Short Line Company in
223 pursuance of the undertaking of the parties hereto to create, establish and maintain in common a new joint, through line of transportation between the respective terminii of the parties hereto, as hereinafter provided; and

Whereas, said San Pedro Company, will in case any of said agreements shall not be obtained from said Southern California, Atchison, Topeka and Santa Fe or Southern Pacific Company provide itself with some other line of railroad extending from the point of its own crossing of the said Atchison Company's line, at or near Daggett aforesaid to a connection with the line of railroad of said Southern Pacific Company, at or near San Bernardino, California, or to its own line at or near Riverside, California, to be used in lieu of any of said proposed to be obtained trackage rights or trackage interests; and

Whereas, in consideration of the premises and in pursuance of such purpose, the parties hereto have agreed to provide for the establishment, construction, ownership and maintenance of a new transportation line over said system of railroads, using therefor the said lines of railroad formerly owned and operated by said Short Line Company, and the said railroads and properties of said San Pedro Company, and those which it shall hereafter construct or acquire,

and by means thereof to make one connected through transportation line between said terminii for the carriage of the business of said Short Line Company and its connections (one of which is the Union Pacific Railroad), and the business of said San Pedro Com-
224 pany and its connections, and for the carriage of business which may originate on their respective lines and be destined to points beyond the same, or which may be delivered to them, or either of them, or to their connections for them, by connecting railroads, as well as for the carriage and transportation of persons and property over the railroads of the respective parties hereto and between their respective terminii as herein defined, upon through tariffs to be jointly made and lawfully published, and upon the divisions of through rates and charges hereinafter provided in respect of interchanged business.

Now therefore, for the purposes aforesaid, and to accomplish the same, and in consideration of the mutual covenants and agreements made between the parties as hereinafter written, and in consideration of other good and valuable considerations by each of the parties to the other paid, the receipt whereof is hereby mutually acknowledged, the parties hereto have mutually covenanted and agreed to and with each other, and do hereby mutually covenant and agree to and with each other as follows, to wit:

ARTICLE I.

SECTION 1. The terms and conditions of this agreement shall exist and be binding upon each of the parties hereto for the term of ninety-nine years from the date of the execution thereof.

SECTION 2. The parties hereto covenant and agree to and with each other that a certain new line of railroad transportation service
225 shall be created, and that the same shall be operated over the railroads below described:

1. The lines of railroad secured, acquired, operated, owned or controlled by San Pedro Company under its corporate franchises and privileges, including and embracing the lines of railroad of the San Pedro Company hereinbefore referred to, and the branch lines of railroad of the San Pedro Company owned, operated, leased or acquired by the San Pedro Company from the Los Angeles Terminal Railway Company, and including all lines of railroad and branch lines of railroad constructed by said San Pedro Company, as well as all lines of railroad and branch lines of railroad leased, acquired, owned or operated under leases or conveyances from the Short Line Company, The New East Tintic Railway Company, the Utah and Pacific Railroad Company, the Utah, Nevada and California Railroad Company, the Atchison, Topeka and Santa Fe Railway Company, the Southern California Railway Company, The Southern Pacific Railroad Company, The Southern Pacific Company, or any other company, and all extensions of any of them.

2. The lines of railroad owned or controlled by the Short Line Company and the branch lines thereof hereinbefore described, and all extensions of any of them.

3. The line of said railroad of said Union Company extending from Ogden, Utah, easterly to its terminus at Council Bluffs, Iowa, together with the branch lines of railroad owned and operated by said Union Company, and any extensions of any of them.

226 ARTICLE II.

SECTION 1. Said San Pedro Company hereby covenants and agrees to and with said Short Line Company that it will not hereafter, during the term of this agreement, extend its said main line of railroad, or any of its branch lines of railroad, nor construct or build any lines of railroad, or aid any other company or companies in the construction or building of any line of railroad, nor assist or advise in the building or construction of any other railroad than the said lines of railroad in Article I. hereof described, northward from Salt Lake City, or which may run into the territory northward of the parallel of Salt Lake City, Utah.

SECTION 2. It is further mutually covenanted and agreed by and between the parties hereto that should conditions develop hereafter which require the construction of branch lines connecting with said San Pedro Company's road south of Salt Lake City, the construction of such lines shall be subject to agreement before the commencement thereof; providing, however, that if either party objects to the construction, the other may build said branches and connect the same with the main line of said San Pedro Company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that the said branch lines shall not directly or indirectly invade the territory of the Short Line Company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line Company's road or roads north of Salt Lake
227 City. On the other hand it is agreed and understood that the Short Line Company shall not build branch lines which will invade the territory of the San Pedro Company south of Salt Lake City or divert business which would be naturally tributary to San Pedro Company's road south of Salt Lake City.

SECTION 3. Said Short Line Company further covenants and agrees to and with said San Pedro Company that it will not build or construct any railroad or branch lines of railroad or aid any other company or companies in the construction of any railroad which will in any manner, either directly or indirectly, enter into or invade the territory south of said Salt Lake City, or south of the parallel thereof, nor so as to in any manner invade or encroach upon the territory of said San Pedro Company lying South of Salt Lake City, nor shall the same be constructed, built, used or operated for the purpose or with the effect of diverting the business naturally tribu-

tary to said San Pedro Company's railroad south of Salt Lake City, or any business originating at or delivered to points located in territory south of Salt Lake City from said San Pedro Company, or to said Short Line Company's railroad, or any other railroad or railroads. Nothing in this article shall limit the power of the Short Line Company to make any additions to or extensions of track or yard facilities of the Salt Lake yard as defined in a certain agreement dated June 18, 1903, between the said Short Line Company and the said San Pedro Company.

228 ARTICLE III.

SECTION 1. Said San Pedro Company hereby covenants and agrees to and with said Short Line Company that it will, with all reasonable dispatch, acquire the right of way for and construct a railroad from a junction with the line of railroad of the Atchison, Topeka and Santa Fe Railway Company's railroad near Daggett or some other point on said last-named company's line of railroad in the State of California, to a connection with the said line of railroad terminating at Calientes in Nevada, and recently acquired from said Short Line Company (that is, the railroad of the Utah, Nevada and California Railroad Company), and that all of said line of railroad so constructed, as well as any line of railroad that may hereafter be constructed by said San Pedro Company, or any part of any line of railroad which may hereafter be rebuilt, reconstructed or improved, and which is, as hereinbefore agreed and provided, to become a portion of said new transportation line, shall be constructed with not less than seventy-five pound rail, and shall be built and equipped as first-class in every respect, and that the equipment, construction and reconstruction of said main line shall and will be, as nearly as practicable, of a standard at least equal to that already adopted and used by said San Pedro Company in the construction of and upon that portion of its said railroad heretofore constructed in southern California, that is to say, between Los Angeles and San Pedro, and between Hobart Junction aforesaid and the end of said constructed line at or near Riverside.

229 Said San Pedro Company further covenants that if it for any reason shall fail to, or shall find it inexpedient to obtain leasehold estates or trackage arrangements for the running of its trains and for the carriage of its business over the rails of the Southern Pacific Railroad Company, the Southern California Railway Company and the Atchison, Topeka and Santa Fe Railway Company as hereinabove described, between Riverside, California, and the said point on the line of Atchison, Topeka and Santa Fe Railway near Daggett, California, then the San Pedro Company will, with all reasonable dispatch, acquire the right of way for and construct, or will acquire by purchase, lease, construction or otherwise, a line of railroad in lieu of the line of railroad hereinabove described between Riverside, California, and the said point near Daggett on the line of the Atchison, Topeka and Santa Fe Railway

Company, and all of the said lines by it constructed or acquired in compliance with the provisions of this section shall be for the use of said through transportation line hereinabove agreed to be created.

ARTICLE IV.

SECTION 1. It is mutually covenanted and agreed by and between the parties hereto, in consideration of the mutual and several covenants and agreements in this article contained, as follows:

(a) Each of the parties hereto hereby agrees to and with each other that said through line of transportation service for the transportation of persons and property over the main line of said
230 San Pedro Company, including its branches above described, and over the respective lines of railroad leased from the said Southern California Railway Company and the said Atchison, Topeka and Santa Fe Railway Company and from the Southern Pacific Railroad Company, or any line of railroad acquired in lieu thereof, and over the said main line and branches of the Short Line Company and its connection the said Union Company, and between the terminii hereinafter defined, shall be created, maintained and operated under the rules and conditions prescribed in this article.

(b) Through passenger train service on said transportation line shall consist of through passenger trains operated over the line of the said Union Pacific Railroad Company from Council Bluffs, Iowa, one of its Missouri River connections or terminals, to its connection with the Short Line Company, thence over the line of the Short Line Company to its connection with the railroad of the said San Pedro Company at Salt Lake City, and thence over the said leased and other railroads of the said San Pedro Company to Los Angeles, California, and if the parties hereto shall hereafter agree, to any terminus of said San Pedro Company's railroad at San Pedro, California, or elsewhere. There may also be created and operated through passenger car service, or if the Short Line Company and the San Pedro Company agree thereon, through passenger train service over the respective main lines of said companies from any terminus of the Short Line Company to the same California terminals of the San Pedro Company.

(c) Through freight service, in through freight trains, by the use of the same railroads and between the same termini
231 defined in paragraphs (a) and (b) of this section, may be created or maintained, but in case the parties hereto shall hereafter mutually agree, the said through freight service may be performed and be deemed fully accomplished by interchange of traffic either in car lots or less than car lots at the respective terminals of the parties; that is to say, as between the Union Company and said through line at its junction with the Short Line Company at Ogden, Utah, and as between the Short Line Company and the said San Pedro Company by a like interchange at Salt Lake City, Utah.

(d) Each of the parties hereto covenants and agrees that said through line of transportation service shall be used by them respectively for the carriage and transportation of any and all business which can or may be carried over said Short Line and its connections and the line of the said Union Company and its connections in conjunction with said San Pedro Company's railroad to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as are offered by any carriers competing for the same business.

(e) Each of the parties hereto covenants and agrees that it will from time to time make, adopt and publish, and to join in the making, adoption and publication of classifications governing all through or interchanged traffic, and from time to time make, adopt and publish through joint tariffs and through joint rates, class and commodity, and from time to time to join in the publication and maintenance of said through rates and published tariffs as required by law.

(f) Said Short Line Company and said Union Company,
232 respectively, covenant and agree with the San Pedro Company, to deal with said San Pedro Company in the matter of interchanged traffic, in respect of classification, rates of charge for all traffic, and in respect of class and quality of service as they respectively deal with each other, and not to discriminate in any respect in favor of each other, or of any connecting line to the prejudice and disadvantage of said San Pedro Company.

SECTION 2. It is agreed that the interchange of traffic by and between San Pedro Company on the one hand, and the Short Line Company and the Union Company on the other hand, as against any competitor of said Short Line Company or said Union Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the said Short Line Company and of said Union Company, and in like manner that the interchange of traffic by and between said Short Line Company and said Union Company on the one hand, and the San Pedro Company on the other hand, as against any competitor of said San Pedro Company, shall be preferential, but not exclusive, except as hereinafter provided in favor of the San Pedro Company, that is to say:

Whereas, the value to the Short Line Company of its lines in Utah south of Salt Lake City, the transfer of which for the purposes aforesaid has been made to the San Pedro Company as hereinbefore stated, consisted largely of their relation as feeders of said Short Line Company and said Union Company; and

233 Whereas, it is not practicable to capitalize the value to said Short Line Company and said Union Company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line Company and said Union Company for the loss which would result from the diversion to other carriers of the traffic moving to and from points on said lines in Utah south of Salt Lake City.

Now, therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro Company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line Company and said Union Company and their respective connections, shall be forwarded exclusively in so far as that may lawfully be done by way of and over the lines of said Short Line Company and said Union Company.

In consideration whereof, said Short Line Company and said Union Company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro Company, exclusively in connection with said San Pedro Company against any and all said San Pedro Company's competitors; and,

Whereas, the owners of said Short Line Company and said Union Company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, California, or to a connection with a railroad already constructed which would give entrance to Los Angeles and other points in southern California; and,

234 Whereas, the value to said Short Line Company and said Union Company of said projected line from Calientes to southern California consisted largely in the profits to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and controlled by said Short Line Company and said Union Company, or by persons or companies friendly to said Short Line Company and said Union Company, of the traffic interchanged at points on the line of, or to be reached by way of the said projected railroad and transportation line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line Company and said Union Company, or by companies friendly to them; and,

Whereas, by the sale or transfer by lease or purchase, to the said San Pedro Company, of the lines of said Short Line Company south of Salt Lake City, Utah, and the Utah, Nevada and California Railroad between Calientes, Nevada, and Uvada, and the Utah and Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between Calientes, Nevada, and Los Angeles, California, in favor of the line proposed to be built by the said San Pedro Company, the said Short Line Company and said Union Company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California, which might be lawfully conducted in the interest of said Short Line Company and said Union Company.

Now, therefore, it is covenanted and agreed, in part con-
235 sideration of the transfer to said San Pedro Company of the ownership or the control of the lines of the Short Line Company south of Salt Lake City, in Utah, including the so-called Terminus branch, of the lines, respectively, of the Utah and Pacific Rail-

road Company between Uvada and Milford, Utah, and of the New East Tintic Railway Company, and of the said Utah, Nevada and California Railroad Company between Calientes, Nevada, and Uvada, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance into Los Angeles, California, as follows:

To unite the roads now owned by said San Pedro Company, or transferred to it by lease or conveyances, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah, and Los Angeles, California, and other points in California, and the roads of the Short Line Company and Union Company, so as to form a through line of transportation service between points in California on the said San Pedro Company's roads and points east and north of Ogden, Utah, on or to be reached by way of said Short Line and said Union Company's lines and their said connecting railroad lines. It is further understood and agreed that in so far as it may be lawfully and profitably done that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole, or in part, the subject of competition by other carriers. To this end it is

236 understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interests of said through line in the conduct of all traffic which may be lawfully, reasonably and profitably conducted by said through line against any and all competitors of said through line.

But this obligation of preference is not to be understood or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in this subdivision which shall be offered for transportation by other connecting carriers, nor so as to require either party hereto to refuse or neglect to receive and duly forward in accordance with shippers' instructions any traffic for which the shipper thereof shall have given, or tendered written instructions directing that said traffic be delivered for forwarding to destination to a connecting carrier other than a party hereto; provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties hereto shall not be less than those, which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier

237 in any device or practice whatsoever designed to give, or which shall have the effect of giving said connection an advantage or preference over said through line, or any part thereof, in soliciting or

carrying the business properly subject to carriage by said through line.

SECTION 3. No arrangement, contract, covenant or agreement for shipment or carriage of persons or property shall be made, permitted or suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy, directly or indirectly, any better rates, or have any better divisions of through rates, or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party, with respect to a like class of traffic.

SECTION 4. Nothing in this agreement contained shall be construed as limiting the rights or privileges or the practices of the Union Company or of the said Short Line Company, and each of them, in respect to interchange of traffic each with the other, and each with the Southern Pacific Company, as fully as before this agreement was made.

SECTION 5. Said Short Line Company and said Union Company is each bound for itself, and undertakes to secure, if possible, a like obligation upon the part of the Southern Pacific Company to deal with said San Pedro Company in the matter of interchange of traffic to and from points south of the parallel of Mojave, Cali-
238 fornia, in respect to rates of charge for all traffic and the divisions of said rates, and in respect to class and quality of service as they, respectively, deal with each other, or with the most favored connection, and not to discriminate in any respect in favor of each other, or of any connecting line to the prejudice and disadvantage of said San Pedro Company.

SECTION 6. It is covenanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah, for business which said Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company; provided, however, that on demand said Short Line Company and said Union Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business.

SECTION 7. Each party hereto covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or against any of said other party's connections, in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service.

239 SECTION 8. Neither party hereto shall or will agree with or make any convention with a competitor of the other party hereto in any respect designed to exclude, or which shall have the

effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto subject to established divisions.

SECTION 9. Said San Pedro Company hereby covenants and agrees to and with the said Short Line Company and the Union Company, and each of them, that it will not now or hereafter interchange traffic with any carrier connecting with it upon more favorable terms as to character or quality of service, nor at any lower rates of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line Company at Salt Lake City.

SECTION 10. Said Short Line Company hereby further undertakes and agrees to negotiate with, and secure if possible from said Southern Pacific Company an undertaking and agreement on its part for the said interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as said Southern Pacific Company has for the interchange of traffic with the Southern California Railway Company.

The San Pedro Company covenants and agrees that it will make a covenant or agreement with the Southern Pacific Company
240 for its (said San Pedro Company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro Company which is or may be subject to competition between said Southern Pacific Company and said San Pedro Company, and that thereafter neither party shall change said rates without the consent of the other party, unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad.

SECTION 11. The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train per day each way over their respective lines between Los Angeles, California, and the terminus of the Union Pacific Railroad at Council Bluffs, Iowa, via Salt Lake City, and, further, if the same can be accomplished, between Council Bluffs, Iowa, and Chicago, Illinois. Such joint through passenger train service shall be established and put in operation whenever and after said through line shall be put in operation, either party hereto shall give to the other written notice of its desire so to do. When so established, the trains necessary therefor shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design, and in all respects the equal or superior of that of competing lines. Each party shall furnish its just quota, in proportion to length of haul, of such equipment. The time schedules for such joint passenger
241 train shall be no greater in point of time than the shortest time

of the trains of competing lines between the same points, and the time established shall be divided *pro rata* per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Each party shall give to such train as quick despatch and as good service over its own line as it gives to any other passenger train. Each party hereto shall receive the through passenger trains of the other party upon delivery, and dispatch the same regularly without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own line, and car mileage at usual rates shall be paid for all cars of either party used upon the lines of the other in the joint business.

SECTION 12. It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line train schedules shall be jointly agreed upon which shall divide the time between the parties hereto *pro rata* per mile, reasonable allowance to be made for difference in physical conditions unless otherwise specially agreed upon to the contrary, and each party shall give to such freight train quick dispatch and as good service over its own lines as it gives to any other freight train thereon, according to class. Unless otherwise agreed upon, said trains shall be dispatched regularly to destination without any delay other
242 than the ordinary station service required by freight trains of like class. Each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and each party shall pay to the other the usual rates allowed for car service, and all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections *pro rata* per mile in proportion to the length of the haul performed by each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis, provided that neither party shall be required to perform any service other than switching service in connection with the other party in respect of business originating upon the line of the railroad of the San Pedro Company and destined to points on the line of the Short Line Company, or its connections, north of Salt Lake City, or *vice versa*, for less than one dollar per ton to the line north of Salt Lake City in one case, or south thereof in the other, except as may be mutually agreed upon from time to time.

Joint through rates for business other than that which is subject to the competition of rival carriers shall be divided *pro rata* per rate; that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties.

Divisions of all joint through rates shall be made on Salt Lake; that is to say, the San Pedro Company and its connections to

243 represent one unit, and the Short Line Company and its connections to represent another unit, but the minimums and arbitraries in this agreement otherwise provided for shall not be affected thereby.

SECTION 13. Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed cannot be located, or arises from concealed or unknown causes, the damages shall be jointly paid by the parties hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition.

SECTION 14. It is further mutually covenanted and agreed by and between the parties hereto that all joint through passenger rates shall be divided in the following proportions:

1. When the joint passenger rate is made of the sum of the published local rates of the parties each party shall receive its local rate.

2. If the through-passenger rate shall be less than the sum of the two or more local rates, made less to meet competition, or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, except as below provided, and

244 neither party shall in any division receive more than its published local tariffs, but neither party shall be required to accept less than fifty cents per passenger.

SECTION 15. Full and accurate accounts shall be kept by each party, showing the kind and amount of such through traffic which has passed over its railroad, the place where it was received and at which it was delivered to the consignee, to one of the parties hereto or to a line connecting with the through lines of the parties hereto, with the amount received for transporting the same.

Statements of account relating to such through traffic (passenger and freight) shall be rendered by each party to the other for each month not later than the 20th of the next succeeding month, and the balances shown to be due thereon may be drawn for on the 25th of the same month, and such drafts, and such balance, shall be paid on presentation without regard to other accounts which may be pending between the parties hereto; but such payments shall be made subject to the correction of any errors or omissions that may thereafter be found to have occurred in said statements of account.

Each company shall have the right, by its authorized agents, to examine, at any time during business hours on business days, the books, accounts and papers of either party hereto relating to the said through business so received and transported.

ARTICLE V.

SECTION 1. Any matter of difference which may hereafter
245 arise between the parties hereto, or any of them, as to the meaning or proper construction of this agreement, or any part thereof, or as to any alleged violation of its provisions, or as to any refusal to perform any duties which it may be claimed this agreement imposes, or as to any amount of money claimed to be due from one party to the other which cannot be amicably adjusted, shall be first referred to the Presidents of the parties hereto, and to that end the party complaining shall deliver to said Presidents a concise written statement of the matter respecting which complaint is made and an adjudication required.

If the said Presidents, within 30 days after receiving such complaint, are unable to unanimously agree upon a settlement of the differences so submitted, then the same shall, within thirty days thereafter, be referred to a committee of the Boards of Directors of the parties hereto to be created, as provided by Section 2 of this article. If, at the expiration of said last-named 30 days and thirty days thereafter, the said committee from the Boards of Directors have not unanimously agreed in respect of such matters, or if the same shall not have been appointed, the party demanding relief shall give to the other parties hereto written notice of its demand for appointment of referees, stating therein specifically the questions to be submitted and naming the person who is to act for it as one of said referees. If, at the expiration of twenty days from the receipt of such notice, the party receiving it has not notified the party demanding the reference of its nomination of a second referee, the party making the demand may make such selection.

246 In selecting the Referees said Short Line Company and said Union Company shall have the right jointly to name one Referee, and to name the second Referee in case the San Pedro Company shall not name a Referee when called upon so to do. The two Referees so chosen shall select a third, but if the two Referees so chosen shall be unable to agree upon a third Referee such third Referee may be appointed upon ten days' notice upon motion of either party by a Judge of the Circuit Court or District Court of the United States within and for the District of Utah.

When the said board is complete the Referees shall fix a day and place for the hearing of which the parties shall be severally notified.

After hearing the testimony and arguments which may be submitted by each party, the Referees, or a majority of them, agreeing upon an award, shall state it in writing, which they shall deliver to each party, and when delivered to both parties shall be binding and conclusive upon each, and each party hereby expressly agrees to be conclusively bound thereby. If either party shall refuse to keep and perform such award the adverse party may enforce the same by apt proceedings in any court of law or equity, and shall have the right, if such refusal shall continue for twelve consecutive calendar

months, upon its own election expressed in writing, to declare this indenture terminated and of no further effect or obligation, which forfeiture shall take place one year from the day on which notice thereof is served upon the delinquent party.

SECTION 2. Said Committee of the Board of Directors of
247 the parties hereto shall consist of one member of the Board of Directors of each of the parties hereto, and the same shall be appointed upon the failure of the said Presidents to agree by the respective Boards of Directors of each of the parties hereto, or by the Executive Committee of said Board.

SECTION 3. The existence of a controversy as to the construction or validity of any covenant or agreement herein contained or in respect to any matter in dispute or the breach or violation of any covenant by either party shall not delay or affect the performance of any other covenant or condition, and pending the decision of said board of arbitration, the business, settlements and payments affected by such controversy shall be transacted and made in the manner and form existing when such business or payments were transacted or made prior to the raising of the question submitted for decision, and, as before the existence of such disagreement and when such question is so finally determined, payments and settlements shall be made by the respective parties as may be required by the award or as may be provided in the agreement or adjustment finally reached, as the case may be.

SECTION 4. If for any reason any of the covenants, promises and agreements in any portion of this agreement expressed shall be adjudged void or shall not be performed according to the tenor of this agreement neither such adjudication nor such failure to perform shall affect the validity or obligation of any other covenant, promise or agreement in this agreement expressed which is in itself valid.
248 Such defaults in performance shall be the subject of arbitration. The arbitrators shall have no power to abrogate the terms of this agreement but may award damages for any such default in performance and shall require future performance of all such conditions. In the event of failure in law of any of the covenants, promises or agreements herein contained each party hereby covenants and agrees to take such steps and make such new contract or contracts as it shall be advised by counsel or otherwise to be necessary to carry into effect the true spirit, purposes and intent of this entire agreement.

SECTION 5. Said board of arbitration may in their final award or judgment apportion the cost or expense of arbitration between the parties to the controversy, or it may award the payment of such cost or expense as it may deem just.

ARTICLE VI.

It is mutually agreed and covenanted by the respective parties hereto, each for itself and for its successors and assigns, that during

the continuance of the term created by this lease and agreement it will maintain its corporate organization and will take steps to properly provide for the renewal and extension of its corporate existence and for the due performance of all and every act which by law
249 may be required to be done to carry out the purposes of this article.

In testimony whereof said companies have caused this agreement to be signed by their respective Presidents and attested by their respective Secretaries and their respective corporate seals to be hereunto affixed the day and the year first above written.

Executed in triplicate.

OREGON SHORT LINE RAILROAD COMPANY,
[SEAL.] By E. H. HARRIMAN, *President.*
Attest:
JOS. HELLEN, *Asst. Secretary.*

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
[SEAL.] By W. A. CLARK, *President.*
Attest:
A. HALLER, *Secretary.*

UNION PACIFIC RAILROAD COMPANY,
[SEAL.] By W. D. CORNISH, *Vice President.*
Attest:
JOS. HELLEN, *Secretary.*

250 Complainant's Exhibit 33 is as follows:

COMPLAINANT'S EXHIBIT 33. (Millar.)

SOUTHERN PACIFIC COMPANY AND SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

TRAFFIC AGREEMENT.

This agreement made and entered into this 18th day of June, 1903, by and between the Southern Pacific Company, a corporation organized and existing under and by virtue of the laws of the State of Kentucky, hereinafter called the Southern Company, as party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, hereinafter called the San Pedro Company, as party of the second part,

Witnesseth, That

Whereas, the said San Pedro Company has entered into a certain contract with the Oregon Short Line Railroad Company and Union Pacific Railroad Company, bearing date the 18th day of June, 1903, relating to the opening and operation of a certain through line of

transportation service from its terminii at Los Angeles and San Pedro, in California, Via Salt Lake City, in connection with the lines of railroad of said Oregon Short Line Railroad Company and Union Pacific Railroad Company; and

251 Whereas, the said San Pedro Company has also acquired the right to use, as a portion of its said through line, certain lines of railroad of said Southern Company in Southern California; and

Whereas, physical connection has been or is about to be made between the lines of railroad of the San Pedro Company and the lines of railroad of the Southern Company, and it is now desired to establish, to the extent herein provided, between the said San Pedro Company and said Southern Company, an interchange of certain traffic.

Now therefore, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, it is hereby mutually covenanted and agreed by and between said parties as follows:

Article I.

Section 1. The said Southern Company undertakes and agrees to and with said San Pedro Company that it will interchange freight traffic in southern California with said San Pedro Company, to and from points south of the parallel of Mojave, California, in like manner and upon as favorable terms and conditions as said Southern Company at the same time interchanges traffic with the Southern California Railway Company, and that in the movement of such traffic, or the charge therefor, under similar circumstances and conditions it will not discriminate in any respect in favor of any

252 connecting line to the prejudice or disadvantage of said San Pedro Company, but this shall not be construed as forbidding or restraining the said Southern Company from favoring its own lines as against the San Pedro line, that is to say, lines of railroad owned, operated or controlled by said Southern Company.

Section 2. The Southern Company, in respect of the traffic mentioned in Section 1 of this Article, will join with said San Pedro Company and with said Oregon Short Line Railroad Company and said Union Pacific Railroad Company in forming through lines of freight service, and in through rates therefor upon agreed divisions of through rates for such service equal to the facilities, service and terms accorded by it to said Southern California Company on like kind of traffic.

Article II.

In partial consideration of the said covenants and agreements of the said Southern Company contained in Article I. hereof, said San Pedro Company hereby covenants and agrees with said Southern Company that it will, upon the execution of this agreement, adopt,

print, publish and put in force at all points upon its leased, owned or operated railroad, for the handling of local business thereon, the lawful rates, tariffs, classifications and charges used by said Southern Company for the handling of any local business which may be the subject of competition between them.

ARTICLE III.

Each party hereto mutually covenants and agrees to and
253 with the other that after the adoption and putting in force of rates as provided by Article II. hereof, neither of them shall or will change any such rates without the consent of the other party hereto unless such change may be made necessary in order to meet the rates, charges, classifications or tariffs of any other company or competing line of railroad or to conform to the final decree or judgment of some court of competent jurisdiction, or some lawful and valid requirement of state or national law.

ARTICLE IV.

In further consideration of the said covenants and agreements of the Southern Company contained in Article I. hereof, the San Pedro Company hereby further covenants and agrees to and with the said Southern Company that it will interchange freight traffic in southern California with said Southern Company to and from points south of the parallel of Mojave, California, in like manner and upon as favorable terms and conditions as said San Pedro Company at the same time interchanges traffic with the Southern California Railway Company, or the Atchison, Topeka and Santa Fe Railway Company, or any other carrier, and that in the movement of such traffic, or the charge therefor, under similar circumstances and conditions it will not discriminate in any respect in favor of any connecting lines to the prejudice or disadvantage of said Southern Company; but this shall not be construed as forbidding or restraining the said San
Pedro Company from favoring its own line as against the
254 Southern Company, that is to say, lines of railroad owned, operated or controlled by San Pedro Company.

ARTICLE V.

The terms and conditions of this agreement shall exist and be binding upon each of the parties hereto for the term of ninety-nine years from the date hereof, or so long as the said agreement between the said Oregon Short Line Railroad Company and the Union Pacific Railroad Company, bearing date the 18th day of June, 1903, shall be in force and observed by the parties thereto.

In testimony whereof said companies have caused this agreement to be signed by their respective Presidents and attested by their

respective Secretaries and their respective seals to be hereunto affixed the day and year first above written.

Executed in Duplicate.

SOUTHERN PACIFIC COMPANY,
[SEAL.] By E. H. HARRIMAN, *President.*
Attest:

JOS HELLEN, *Asst. Secretary.*

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
[SEAL.] By W. A. CLARK, *President.*
Attest:

A. HALLER, *Secretary.*

255 Complainant's Exhibit 34 is as follows:

COMPLAINANT'S EXHIBIT 34. (Millar.)

LEAMINGTON CUT-OFF

OREGON SHORT LINE RAILROAD COMPANY

TO

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY

DEED.

This indenture, made and entered into this 18th day of June, A. D. 1903, by and between Oregon Short Line Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the Short Line Company, party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the San Pedro Company, party of the second part,

Witnesseth:

Whereas, the Short Line Company is a corporation created by and existing under the laws of the State of Utah, and has corporate power to own, and is the owner, amongst other railroads and property, of a certain partially constructed railroad now under construction, and beginning at a point near Salt Lake City, Utah, and extending in a general westerly and southwesterly direction via Garfield, through Stockton and through or near the Tintic mining districts to a
256 point commonly called Leamington Junction, in the County of Millard in the State of Utah, a distance in all of about one hundred and fifteen and two-tenths (115.2) miles, and which partially constructed railroad is commonly called the Leamington Cut-Off; and

Whereas, said Short Line Company, amongst other powers given and granted to it, has power and authority to sell, convey, transfer, let or lease its property and franchises, or any part thereof, to any corporation not owning any competitive line of railroad in the State of Utah: and

Whereas, said San Pedro, Los Angeles and Salt Lake Railroad Company is a corporation created by and existing under the laws of the State of Utah, which has not acquired any line of railroad within said State, and has corporate power to acquire by constructing, purchasing, leasing or otherwise, and to equip, own, control, maintain and operate by steam or electric power for the carriage of passengers and freight for hire, a main or trunk line of railway from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route to a terminus at East San Pedro, on the shores of the Pacific Ocean, in the County of Los Angeles, in the State of California, with power, in like manner, to acquire various branch lines of railroad and other property; and

Whereas, said San Pedro Company has further corporate power "for the purpose of buying, owning, maintaining, operating and further extending the railroad rights, property and franchises of any railroad corporation or corporations now or hereafter owning
257 railroad rights, property and franchises in the State of Utah, and which said railroad rights, property and franchises are, or may be, so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad hereinbefore described, or a branch line or branch lines thereof, and connecting with said main line;" and

Whereas, said Short Line Company, in the exercise of its corporate powers, and in accordance with due corporate action has determined to accept an offer made to it for the purchase of the said partially constructed railroad, known as the Leamington Cut-Off, and hereinafter described, for good and valuable considerations.

Now therefore this indenture witnesseth, that the Oregon Short Line Railroad Company, in consideration of the sum of Five Dollars, to it in hand paid at and before the execution hereof, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over unto the San Pedro, Los Angeles and Salt Lake Railroad Company, and to its successors and assigns, all and singular the following described part of its railroad; that is to say, the partially constructed lines of railroad above referred to, and commonly known as the Leamington Cut-Off, and all of the property, rights and privileges of said Short Line Company therein and thereto, described as follows:

Commencing at a point on the west bank of the Jordan
258 River north of Block Three (3), in Highland Park Addition to the city of Salt Lake, being in the northwest quarter of the northwest quarter of Section Two (2), Township One (1) South,

Range One (1) West, said point being thirty-four hundred sixty-four feet south eighty (80) degrees three (3) minutes west from the intersection of the west line of Seventh West Street, in the City of Salt Lake, with the Salt Lake Base line; extending thence southwesterly through Salt Lake County and into Tooele County, and passing through point known as "Garfield," in Tooele County, and through the towns of Tooele, Stockton and Center, in said Tooele County, by the way of Boulter Summit, to Juab County, and southerly through Silver City Junction, in Juab County, to the south boundary of Juab County, and to Leamington Hill in Millard County, connecting with the existing line of the Oregon Short Line Railroad, formerly known as the Utah Southern Railroad Extension, with a switch which is located south thirty-six (36) degrees and three (3) minutes west fifteen thousand one hundred ninety-seven and three-tenths (15,197.3) feet from the southwest corner of Section thirty-one (31), in Township Fourteen (14) South, Range Four (4) West:

Together with all of the rights of way, lands, station grounds, water supplies, bridges, tracks, buildings, depots, fences, rights or interests in telegraph and telephone lines and railroad property pertaining thereto, but the said railroad or railroad properties hereby conveyed or intended to be conveyed, do not include any moneys or credits, nor any equipment, engines, cars, rolling stock supplies, tools, fuel, track cars, push cars, supplies and material, or other
259 movable property of every kind whatever, and all such property is hereby expressly reserved to the grantor.

To have and to hold the said railroad property, and each and every part thereof, and all the appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, and its successors and assigns forever, except as above excepted and reserved.

In witness whereof the party of the first part has caused these presents to be signed by its Vice-President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

OREGON SHORT LINE RAILROAD COMPANY,
[SEAL.] By W. D. CORNISH *Vice-President.*

Attest:
JOS HELLEN *Assistant Secretary.*

STATE OF NEW YORK
City and County of New York, ss.

On the 6th day of July, A. D. 1903, personally appeared before me W. D. Cornish, who, being by me duly sworn, did say that he is the Vice-President of the Oregon Short Line Railroad Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and of a resolution of its Board of Directors, and said W. D. Cornish acknowledged to me that said corporation executed the same.

Given under my hand and notarial seal at and within said county on the day and year last aforesaid.

CHARLES J. HOEHNLE,
[SEAL.] *Notary Public Kings County.*
Certificate filed in N Y County.

260 Complainant's Exhibit 35 is as follows:

COMPLAINANT'S EXHIBIT 35. (Millar.)

OREGON SHORT LINE RAILROAD COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY.

GUARANTY OF UNION PACIFIC RAILROAD COMPANY TO RELEASE LIEN OF PRESENT AND FUTURE HOLDINGS OF INCOME A OR INCOME B BONDS.

This agreement, made and entered into this 15th day of June, 1903, by and between the corporations below named, each of which are corporations created by and existing under the laws of the State of Utah, viz: the Oregon Short Line Railroad Company, hereinafter for convenience called the Short Line Company, as party of the first part, the San Pedro, Los Angeles and Salt Lake Railroad Company, hereinafter for convenience called the San Pedro Company, as party of the second part, and the Union Pacific Railroad Company, hereinafter for convenience called the Union Company, as party of the third part,

Witnesseth:

Whereas said Short Line Company is about to sell and convey certain of its railroad properties to the said San Pedro Company, which said properties about to be sold and conveyed are subject to the following described mortgages of said Short Line Company:

1. The Income A mortgage of said Short Line Company dated March 1, 1897, to the Old Colony Trust Company, of
261 Boston, Massachusetts, to secure a possible issue of $7,185,000 of said Short Line Company's Five Per Cent. Non-cumulative Fifty Year Income A bonds, Series A, of which there have been issued and are now outstanding the par amount of $7,185,000.

2. The Income B mortgage of said Short Line Company to the State Trust Company of New York to secure an issue of collateral trust Non-cumulative B bonds not exceeding $15,000,000, of which there have been issued and are now outstanding $14,831,000; and

Whereas, said Union Company is the owner of $6,715,500 of said above described Income A mortgage bonds, and is also the owner of $14,781,000 of said above described Income B mortgage bonds; and

Whereas, it is desired that said properties of said Short Line Company so about to be sold and conveyed to the San Pedro Company shall within a reasonable time be released and discharged from the

lien and charge of said Income A mortgage bonds and said Income B mortgage bonds now owned by the Union Company; and

Whereas, said Union Company may become the owner and holder of the remaining outstanding Income A mortgage bonds and said Income B mortgage bonds, or some of them, and it is desired that when the said Union Company becomes the owner thereof such remaining Income A mortgage bonds and Income B mortgage bonds shall in like reasonable time thereafter be released and discharged as to the said property so about to be sold and conveyed to said San Pedro Company.

262 Now, therefore, in consideration of the premises and of certain good and valuable considerations moving to said Union Company it is hereby covenanted and agreed by said Union Company to and with the said Short Line Company and said San Pedro Company that said Union Company shall and will in the within reasonable time and in the manner below stated release and discharge the said properties about to be conveyed by said Short Line Company to said San Pedro Company from the lien and charge of all of said Income A mortgage bonds and of the said Income B mortgage bonds now owned by said Union Company, and will likewise, from time to time, as it may become the owner or holder of any additional of said Income A bonds or of said Income B bonds, within a reasonable time release the said property from the lien of such additional bonds which it may hereafter acquire. All of the releases above provided for may be effected by stamping a notation thereof upon said bonds.

In witness whereof the parties hereto have caused these presents to be signed by their respective Presidents, and their respective seals to be affixed hereto, attested by their respective Secretaries, the day and year first above written.

Signed in triplicate.

[SEAL.] OREGON SHORT LINE RAILROAD COMPANY,
By W. D. CORNISH, *Vice President.*

Attest.
JOS. HELLEN,
Asst. Secretary.

[SEAL.] SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
By W. A. CLARK, *President.*

Attest.
A. HALLER,
Secretary.

[SEAL.] UNION PACIFIC RAILROAD COMPANY,
By W. D. CORNISH, *Vice President.*

Attest.
JOS. HELLEN,
Asst. Secretary.

263 Complainant's Exhibit 36 is as follows:

COMPLAINANT'S EXHIBIT 36. (Millar.)

LEASE.

Riverside to San Bernardino.

SOUTHERN PACIFIC COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY

TO

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY

This indenture, made and entered into this 18th day of June, 1903, by and between the Southern Pacific Company, hereinafter called the "Pacific Company," a corporation created by and existing under and by virtue of the laws of the State of Kentucky, as party of the first part, the Southern Pacific Railroad Company, hereinafter called the "California Company," a corporation created by and existing under the laws of the State of California, as party of the second part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, hereinafter called the "San Pedro Company," a corporation created and existing under and by virtue of the laws of the State of Utah, as party of the third part,

Witnesseth:

Whereas, the Pacific company is the lessee of a certain railroad of the Southern Pacific Railroad Company, and operates the same, and which in part extends from Riverside, California, through Colton,

264 California, to San Bernardino, in said state, and said San Pedro company is now engaged in acquiring, and intends to acquire and operate a railroad from San Pedro and Los Angeles, via Hobart, in said state, and from Riverside through San Bernardino, and by the use of a railroad to be constructed by it, and by the use of leasehold or other acquired rights over other railroads to Salt Lake City, Utah, and desires to obtain from the said Pacific company, and from said California company, the right to the use and occupation in common with said Pacific company and any other company which the Pacific company may admit thereto, of that part of the said line of railroad of the Pacific company extending from a point at or near Riverside, California, through Colton and to San Bernardino, and to a connection of said railroad track of the Pacific company with the tracks and railroad of the Southern California Railroad Company, as is more definitely and particularly described in Section 1 of Article I, of this agreement, and in the schedule description and map thereof annexed to this agreement.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter set out and contained, the parties hereto have severally agreed as follows:

Article I.

Section 1. The Pacific company hereby demises and leases to the San Pedro company for the term of forty-nine (49) years, commencing on the first day of October, 1903, subject to termination as hereinafter provided, the right to run, operate and manage its engines, cars and trains of all classes in both directions, including the right to use in common with the said Pacific company
265 its main and passing tracks, side tracks, station buildings, appurtenances and facilities situated thereon, as shown on the attached map, marked "Exhibit A," and made a part hereof, and more particularly described as follows:

Commencing at the junction of the railroad track or tracks of the San Pedro company, with the tracks of the Pacific company, at or near Riverside Junction, California, and extending from thence to the terminus of the said Pacific company's line of railroad at and within the said City of San Bernardino, California, together with the like right of use of a certain track of the Pacific company to be by it hereafter constructed and maintained, extending from the line of railroad above described, in the City of Colton, to a junction and connection with the "Y" track of said Southern California Railroad Company in said Colton, a distance of nine and fifty-eight hundredths (9.58) miles.

Section 2. The Pacific Company will, during the year 1903, or the year following, cause the above-described portion of its railroad to be ballasted and relaid with new eighty-pound rail, and no part of the cost of such ballasting or new rails, or the relaying thereof, shall be paid by the said San Pedro Company.

Section 3. The Pacific Company hereby accords to the San Pedro Company, for the term of this agreement, the right to the use of a portion of the Pacific Company's right of way at Riverside aforesaid of sufficient width and extent for the construction and maintenance thereon of connecting tracks between the lines of railroad of
266 said companies, as shown on attached map, marked Exhibit A. Such grant is made for the sole purpose of permitting and allowing the San Pedro company to construct and maintain at its sole cost and expense the said connecting tracks at Riverside aforesaid, the location of which is indicated by the lines representing the same as marked upon said Exhibit A. The said San Pedro company agrees to construct and maintain said connecting tracks, the Pacific company putting in the switches in its own tracks for the purpose of enabling such connections.

Section 4. The engines, cars and trains of the San Pedro company, when on said demised premises, shall have the equality of rights and privileges accorded to the engines, cars and trains of the Pacific company, or of any other company admitted thereon, of the respective classes of trains, but subject to the conditions and terms of the rules and schedules provided for by Sections 1 and 2 of Article III. hereof.

SECTION 5. All employees upon any part of the premises described in Section 1 of this Article shall be employed and paid by the Pacific company, and may be discharged at will by the Pacific company, and shall be discharged for reasonable cause upon a request in writing made by the General Manager of the San Pedro Company to the General Manager of the Pacific company. All such employees shall be neutral and impartial, and shall as far as practicable, give each of the parties hereto equality of service, but shall receive general orders and directions from, and be under the direct supervision of, the proper superintendents or other officers of the Pacific company. Provided, however, that the officers of the San Pedro company may issue
267 orders direct to such station employees respecting the usual conduct of the business of said San Pedro company with the public, which orders shall not relate to, or in any manner interfere with, the movement of trains or the management and operation of the road, as in this agreement provided.

SECTION 6. The Pacific company shall have charge, supervision and control of the management and operation of the said property described in Section 1 hereof, and of the operation of all trains over the same, and shall make all the rules and regulations necessary or proper to be made in respect to the operation and maintenance thereof; but the San Pedro company shall be placed by the Pacific company, in respect to all matters of operation, train service and station service, upon an equality of footing with the Pacific company.

SECTION 7. The San Pedro company shall not have the right to admit any other road to the use of the premises described in this agreement. It may use the trackage and other privileges hereby granted to it, solely in the prosecution and transaction of its own business; and it shall not assign the rights hereby granted to it, or any part thereof, or any interest therein, to any other company or person; nor will it sublet any of the privileges hereby granted to it, or any part or parcel thereof, to any other company or person; nor will it grant or allow, directly or indirectly, the advantage or use of the trackage or other privileges, hereby conferred upon it, to any other company or person; and any attempted sale, assignment or underletting or transfer of said right, title or interest of the
268 San Pedro company herein, except as provided in Article IV. hereof, shall, at the option of the Pacific company, render this agreement void, and the Pacific company may thereupon exclude the San Pedro company and all persons or corporations claiming through it, from the occupation, use and enjoyment of the rights and facilities granted by this contract.

SECTION 8. The Pacific company may admit any other company operating a railroad to the joint occupation and use of the tracks and premises embraced in this agreement, upon such terms and conditions as it may see fit; but the Pacific company hereby agrees that no contract which it may make with any other railroad company for the joint occupancy of the said road and premises shall increase the legal liability of the San Pedro company relating to or affecting

loss and damage to persons or property; Provided, that such additional burden placed upon said tracks and premises shall not deprive the San Pedro company of its reasonable and proper use thereof for the purposes for which such use is hereby granted.

SECTION 9. In case any other company operating a railroad shall be admitted by the Pacific company to the joint occupation and use of the tracks and premises embraced in this agreement, as hereinbefore provided, the total expenses actually incurred in any month for repairing, renewing, maintaining and operating said railroad and all appurtenances thereto and connected therewith, and of the taxes thereon, shall be borne by the several companies using said road, in the proportion that the car and engine mileage of
269 each bears to the total car and engine mileage of all of said companies.

ARTICLE II.

SECTION 1. The San Pedro Company hereby covenants and agrees to and with the Pacific Company that it will pay to the Pacific Company, monthly, for such use of said railroad and appurtenances, a monthly rental as follows:

(a) A sum equal to one-twelfth of two per cent. per annum upon two hundred and fifty-four thousand eight hundred dollars ($254,800), which is the valuation of said nine and fifty-eight hundredths (9.58) miles of track at the agreed valuation of twenty-six thousand six hundred dollars per mile for said railroad and its appurtenances.

(b) A sum equal to a car and engine mileage proportion (as per subdivision "c" of this section) of all taxes which shall be legally assessed and levied upon the property herein demised. If the taxes are levied or assessed upon said property, or any of it, with other property of the Pacific company, in such manner that they cannot be readily or satisfactorily separated, then the just amount of such taxes pertaining to the demised properties shall be ascertained as fairly and as equitably as may be, and the amount thereof shared by the parties hereto in the proportion stated. If the parties hereto cannot agree upon such apportionment the matter shall be disposed of by arbitration as hereinafter provided.

(c) A sum equal to one-twelfth of two per cent. per annum from the time when expenditure for each thereof shall be made upon
270 the cost of all additions and permanent betterments, except as specially otherwise provided in Article I., Section 2, hereof, which the Pacific company may make to and on the joint line, and upon the cost of all such changes in its permanent way, and upon the costs of all such viaducts, bridges, subways, works and appliances of every name and nature as the Pacific company may deem necessary to make, construct or furnish for the safe or convenient operation thereof, or as by any law of the State of California or any ordinance of any municipal corporation thereof it may be required to make, construct or furnish thereto or thereon. But whenever any other

railway company or companies shall, by permission of the Pacific company, be using the joint line or any part thereof, the annual sum received in and by this paragraph shall be so adjusted in respect to the property so used by each other company or companies that the San Pedro company shall at all times pay in lieu of such two per cent. per annum, such proportion of four per cent. per annum upon each said cost item as *one* shall bear to the whole number of companies at the same time using the joint line or any part thereof.

(d) A sum equal to the proportional share of the expenses actually incurred in repairing, renewing, maintaining and operating said railroad and all appurtenances thereto and connected therewith upon the leased premises, which shall bear the same proportion to the whole amount expended for such expenses as the actual number of car and engine miles run over said railroad by the San Pedro company shall bear to the whole number of car and engine miles covered by all trains operated thereon by all companies running trains thereon; but each company shall bear and pay the wages of its own trainmen,
271 and the running expenses of its own trains and equipment, except when engaged in work, construction, wrecking or other joint service on the track jointly used.

(e) A sum equal to a like proportional share (ascertained according to the rule of subdivision (d) of this section) of the expenses actually incurred in each month in paying the salaries of all such employees as may be employed in the performance of duties incident to a joint use and occupation of said railway and the duty of maintaining and operating the same, as well as a like share of the expenses for water supply.

SECTION 2. The said rental shall be paid in monthly installments on or before the 20th day of the month following that in or for which it accrued upon the presentation of a statement by the Pacific company to the San Pedro company, showing the amount due, accompanied by certified copies of the payrolls and vouchers, if desired, showing the payment of expenses mentioned in the foregoing section, subdivisions (b), (d) and (e).

SECTION 3. Upon request therefor, the Pacific company hereby agrees, in case of emergency, to furnish supplies and fuel for the engines of the San Pedro company from its stores, located upon said premises, at actual cost thereof, adding usual freight charges, plus ten per cent. premium, such supplies to be paid for monthly upon bills rendered therefor.

272 SECTION 4. It is intended that there shall be embraced under the terms of this agreement a right to the San Pedro company to the use of the passenger and freight stations of the Pacific company for the transaction of the through common carrier business of the San Pedro company at San Bernardino, Colton and at such other stations as may now or hereafter be opened between said San Bernardino and the point of junction of said San Pedro company's railroad with the railroad of the Pacific company near Riverside, as aforesaid, all of which stations described in this section shall be

operated by the Pacific company by its own employees for the performance of the duties and obligations and the carrying on of the business as common carrier of both parties hereto at their joint expense, upon the terms and conditions in this agreement elsewhere fully written. The San Pedro company is not to engage in traffic whose origin *and* destination are both on the joint line but is free to handle any traffic whereof either the origin *or* destination is on the joint lines.

ARTICLE III.

SECTION 1. Schedules for the movement of engines and trains over said demised line of railroad shall be made by the Pacific company with the assent of the San Pedro company so far as they relate to the trains of the San Pedro company, which schedules shall, as nearly as may be practicable, accord equality of rights, privileges and advantages to the trains of the same class operated by both parties hereto; and to trains of a superior class operated by either party a preference over trains of an inferior class operated by either party.

273 SECTION 2. The Pacific company shall make the rules and regulations for the operation of that portion of its railway to be used jointly by the parties hereto, which shall have like application to all engines and trains which shall be moved over said demised property. All trains shall move under, and in accordance with, the orders of the superintendent or train-dispatchers of the Pacific company, who shall, as nearly as may be practicable, secure equality of rights and privileges to all trains of the same class.

SECTION 3. The maintenance, repairs, renewals and betterment of said demised premises shall be under the sole care, direction and control of the Pacific company, but repairs, renewals and betterments of an unusual character shall be made only with the concurrence of both parties hereto, or, if they cannot agree the issue shall be submitted to arbitration as hereinafter provided.

ARTICLE IV.

SECTION 1. All employees engaged in the performance of duties incident to the joint use of the demised premises, while employed thereon, although paid by the Pacific company, shall be considered as joint employees, and shall assist the employees of either party in case of derailment or other accident, and any casualty, loss or damage to either party occasioned by carelessness, neglect or fault of joint employees, shall be borne by the party suffering the loss; the intention of this contract being to grant the San Pedro company the right to run its trains over the demised premises, but not to insure
274 it against the usual hazard attending the movement of trains; provided, however, that if any persons are engaged partly in the maintenance and operation of the demised property, and partly in service not connected with the maintenance or operation thereof,

then and in that case they shall be regarded as joint employees only to the extent of their engagement for the joint use and benefit of the parties hereto, and any other party or parties that may be hereafter admitted to the use of the demised premises.

SECTION 2. The Pacific company shall be bound to use only reasonable and customary care, skill and diligence in maintaining and repairing the roadway, tracks, structures and appliances of and pertaining to the said jointly used line. Except enginemen and trainmen in revenue train service, all employees of the Pacific company in any wise engaged in maintaining, repairing or operating said joint line, shall, as between the parties hereto be deemed joint employees of both parties.

The San Pedro company shall not, by reason of any defect in any such roadway, track structure or appliances, or by reason of the failure or neglect of the Pacific company to repair such defect, have or make any claim or demand against the Pacific company for any loss, damage or injury whatsoever arising from such defect, neglect or failure; but in case the Pacific company shall fail to repair any such defect as aforesaid within a reasonable time after the San Pedro company shall have given to the Pacific company written notice
275 specifying the defect and requesting that it be repaired, then the San Pedro company shall have the right to make the necessary repairs at once, and the Pacific company shall and will pay the cost thereof, which shall thereupon be apportioned between the parties as hereinbefore provided.

SECTION 3. The San Pedro company hereby assumes all risks of all loss, damage or injury which shall in any manner occur in and upon any track, building or premises, the use whereof is herein granted, whether to property of the San Pedro company or to property in its custody, or to its passengers, or to its employees, or which third persons or the property of third persons shall suffer by reason of the movement of any engine, car or train of the San Pedro company in all respects as if the San Pedro company had been in the exclusive use and control of such track, building or premises, excepting only such loss, damage or injury as shall be caused by the negligence of employees solely of the Pacific company; and, excepting only as aforesaid, the San Pedro company hereby agrees to save the Pacific company harmless from all such loss, damage and injury, from all liability and claim therefor, and from all consequent costs and expenses.

Each party hereto hereby agrees to save the other party harmless from all loss, damage and injury caused by the negligence of its own sole employees, from all liability and claim therefor, and from all consequent costs and expenses.

The parties hereto expressly covenant and agree, that in case
276 of a collision between their respective engines, cars or trains while on any of the premises aforesaid, the party whose employees are alone in the fault shall be solely responsible for, and shall settle and pay for the entire loss and damage caused thereby and

shall so save the other party harmless therefrom; and that in case any such collision is caused by the fault of the employees of both parties or by the fault of any joint employee or employees, or in case the cause of the collision is so concealed that it cannot be determined whose employee or employees are at fault, each party shall bear and pay all the loss, damage and injury which its own property or property in its custody, or its employees or passengers may have suffered in consequence thereof.

Any employee of one company engaged in the operation of any part of the joint line shall be removed from said line upon written request of the other. All liability for damages to persons or property in connection with the maintenance or operation of the joint line from any cause, except as herein otherwise provided, shall be deemed an expense of operating the joint line and shall be paid and apportioned accordingly.

SECTION 4. In case any of the San Pedro company's trains shall be wrecked while running on the joint line, such wreck may be picked up and removed by the Pacific company, and the cost of such service shall, except as herein otherwise expressly provided, be borne and paid by the San Pedro company.

SECTION 5. In case a suit or suits shall be commenced by any person or persons, corporation or corporations against either
277 party hereto, for or on account of any damage or injury for which the other party is liable under this agreement, the party so sued shall give to the other party notice of the pendency of such suit, and thereupon such other party shall and will assume the defense of such suit, and shall and will save and hold the party so sued harmless from all loss and from all costs by reason thereof. Each party shall give to the other notice of any suit commenced an opportunity to defend the same in all cases where such other party may be called upon to participate in payment of damages, or in compliance with the judgment or decree to be entered therein. Neither party shall be concluded by any judgment against the other unless it had reasonable notice that it was required to defend, and had reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party notified shall be concluded by the judgment as to all matters which could have been litigated in such suit.

SECTION 6. The provisions of this contract in respect to the remedies of either party, in the event of any failure or default of the other party, shall not be the sole remedy of the party injured, but the party injured may, nevertheless, have and may resort to other legal or equitable remedies.

ARTICLE V.

The San Pedro company shall have the right to handle as its own business, on and over the joint line, traffic whose origin or destination is a point on the joint line.

Except as in this article otherwise provided, the San
278 Pedro company shall not, without the written consent of the Pacific company, sell or in any manner assign or transfer this agreement, or any of the rights and privileges under and by it granted, or permit any person or persons, company or companies to share in such rights or privileges, or any of them. This agreement, however, shall attach to and run with the railways of the respective parties hereto, and shall be binding upon and inure to the benefit of any railway company hereafter owning or operating either such railway.

ARTICLE VII.

This agreement shall take effect and be in force from and after the first day of October, 1903.

If the San Pedro company shall make default in any of the payments hereinbefore required by it to be made, then and in such case, and if such default shall continue for a period of ninety days after the Pacific company shall have given to the San Pedro company a written notice thereof, the Pacific company may, by notice in writing to the San Pedro company, declare this agreement terminated, and may thereupon exclude the San Pedro company from the use and enjoyment of any and all of the premises and rights hereinbefore granted to it; and thereupon the San Pedro company shall surrender to the Pacific company all of said premises, and shall have no claim or demand upon it, by suit at law or otherwise, on account of such exclusion: provided that failure to make any payment which is the subject of arbitration or litigation between the parties shall
279 not, pending such arbitration or litigation be deemed cause of forfeiture hereunder.

The Pacific company may waive any such default, but no action of the Pacific Company in waiving such default shall extend to or be taken to affect any subsequent default or impair its rights resulting therefrom.

ARTICLE VIII.

SECTION 1. If at any time a question shall arise touching the construction of any part of this contract or concerning the business or manner of transacting the business carried on under the provisions hereof, or concerning the observance or performance of any of the covenants herein contained upon which question the parties hereto cannot agree, such question shall be submitted to the arbitrament of three disinterested persons, to be chosen one by the Pacific company and one by the San Pedro company, and the other by the two so chosen. The party desiring such arbitration shall select its arbitrator and give written notice thereof to the other party, and shall in such notice state precisely the matter or matters which it proposes to bring before the arbitrators, and only the matters so stated shall be considered or decided by them. If either party shall fail to name an arbitrator within ten days after notice as aforesaid has been by the other

party given to it, the arbitrator named by the party giving such notice may and shall name and appoint an arbitrator for and on behalf of the party so in default, and the arbitrator so named and appointed shall have the same power and authority as if he had
280 been chosen by such party. If the two arbitrators thus chosen shall fail to select a third arbitrator within ten days after the selection of the two arbitrators as aforesaid, such third arbitrator may be appointed, upon ten days' written notice by either party thereto to the other party of its intention to make application therefor, by any judge of the superior court of Los Angeles County, California. The arbitrators shall, as soon as possible after their selection, meet to hear and decide the questions submitted to them, and shall give to each party reasonable notice of the time and place of such meeting. After hearing both parties and taking such testimony or making such investigation as they may deem necessary, they shall make in writing their award upon the question or questions so submitted to them, and shall serve a copy of such award upon each party hereto, and the award of such arbitrators or of a majority of them, shall be final and binding upon both parties; and each or either party shall immediately make such changes in the conduct of its business, or such payments or restitution, as the case may be, as in and by such award may be required of them resepectively. If the arbitrators shall find that either party has wilfully violated any of its covenants herein contained, they may award to the other party such sum or sums of money, as compensation for such wilful violations, as they may deem just and right, and the party against whom such award may be made covenants and agrees to pay the same.

The books and papers of both parties, so far as they relate to
281 matters submitted to the arbitrators, shall be open to the examination of the arbitrators, and the party against whom the award shall be made shall pay all the fees and expenses of the arbitration. Until the arbitrators shall make their award upon any question submitted to them, the business, settlements and payments to be transacted and made under this agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such questions.

SECTION 2. All the notices which are hereinbefore provided to be given by either party to the other may be given by serving the same on the President, Vice-President or Manager for the time being of such other party.

SECTION 3. If for any reason any covenant or agreement in this contract expressed, not material to the right of the San Pedro company to use the joint line, shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or agreement which is in itself valid. No controversy as to the construction or validity of any covenant or agreement shall delay the performance of any other covenant or agreement. In the event of the failure in law of any covenant or agreement herein contained, such steps shall be taken, and such further contract or con-

tracts shall be made as shall be advised by counsel to carry into effect the purposes and intents herein expressed.

In witness whereof, each party hereto has caused this instru-
282 ment to be signed by the proper officer and its corporate seal to be hereto affixed and attested by its secretary, the day and year first above written.

Signed in triplicate.

SOUTHERN PACIFIC COMPANY,
[SEAL.] By E. H. HARRIMAN, *President.*

Attest:
JOS. HELLEN, *Secretary.*

SOUTHERN PACIFIC RAILROAD COMPANY,
[SEAL.] By E. H. HARRIMAN, *President.*

Attest:
----------, *Secretary.*

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
[SEAL.] By W. A. CLARK, *President.*

Attest:
A. HALLER, *Secretary.*

283 Complainant's Exhibit 37 is as follows:

COMPLAINANT'S EXHIBIT 37. (Millar.)

Lines south of Salt Lake City.

OREGON SHORT LINE RAILROAD COMPANY

TO

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

DEED.

This indenture, made and entered into this 18th day of June, A. D. 1903, by and between Oregon Short Line Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the Short Line Company, party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the San Pedro Company, party of the second part,

Witnesseth:

Whereas, the Short Line Company is a corporation created by and existing under the laws of the State of Utah, and has corporate power to own, and is the owner, amongst other railroads and property, of

a certain line of railroad extending southerly from a point on the centre line of the main track of the Oregon Short Line Railroad Company fifty-seven hundred and fifty-six and three-tenths (5,756.3) feet southerly along said center line from the north end of the
284 depot building at Sandy Station, in Salt Lake County, Utah, said point being also south forty-five (45) degrees and thirty-one (31) minutes east nineteen hundred and seventy-eight and seven-tenths (1,978.7) feet from the northwest corner of section seven (7), Township three (3) South, Range one (1) east of Salt Lake Base Meridian, and passing from said described point through the counties of Salt Lake, Utah and Juab, and thence through Leamington and Leamington Junction to Milford, and from Milford to a terminus thereof at Frisco, in Beaver County, Utah, and also that line of railroad formerly known as the Salt Lake and Western Railway, extending from a point on the center line of said above described line of railroad at Lehi Junction, said point being the original switch head-block at the junction of the tracks of the Salt Lake and Western Railway with the Utah Southern Railroad as originally constructed, and being eight hundred and thirty-six and one-tenth (836.1) feet southerly along the center line of the main track of said Utah Southern Railroad from the north end of the depot at Lehi Junction, said point being also north sixty-two (62) degrees and forty-seven (47) minutes west, a distance of thirty-six hundred and seventyone and five-tenths (3,671.5) feet from the southeast corner of Section five (5), Township Five (5) south, Range One (1) east of the Salt Lake Base and Meridian, and which extends westerly through Utah County and southerly through Tooele County and into Juab County, through Ironton, in said Juab County, a distance of fifty-three and fifty-two hundredths (53.52) miles to a terminus thereof at Tintic, together with a certain branch of said railroad known as the Eureka branch, and with another certain branch of said railroad
285 known as the Silver City branch, and with another branch of said railroad known as the Mammoth branch thereof, all of which is more particularly hereinafter described; and

Whereas, said Short Line Company, amongst other powers given and granted to it, has corporate authority to sell, convey, transfer, let or lease its property and franchises, or any part thereof to any corporation not owning any competitive line of railroad in the State of Utah; and

Whereas, said San Pedro, Los Angeles and Salt Lake Railroad Company is a corporation created by and existing under the laws of the State of Utah, but which has not acquired any line of railroad within said state, and has corporate power to acquire by constructing, purchasing, leasing, or otherwise, and to equip, own, control, maintain and operate by steam or electric power for the carriage of passengers and freight for hire, a main or trunk line of railway from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route to a terminus at East San Pedro on the shores of the Pacific Ocean, in the

County of Los Angeles, in the State of California, with power in like manner to acquire various branch lines of railroad and other property; and

Whereas, said San Pedro Company has further corporate power, "for the purposes of buying, owning, maintaining, operating and further extending the railroad rights, property and franchises of any railroad corporation or corporations, now or hereafter owning railroad rights, property and franchises in the State of Utah, and
286 which said railroad rights, property and franchises are, or may be, so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad hereinbefore described, or a branch line or branch lines thereof and connecting with said main line;" and

Whereas, said Short Line Company, in the exercise of its corporate powers and in accordance with due corporate action, has determined that the said parts and parcels of its railroad in this conveyance described are no longer requisite for the use for the purpose which the same have been acquired or used and are no longer necessary or expedient to be retained for use in connection with its said railroad and are no longer required for the uses and purposes of its said railroad or business, and that all of said described parts and parcels of its said railroad should be thrown out of use and the operation thereof abandoned by said Short Line Company, and that the same and every part thereof should be sold by said Short Line Company and conveyed to the said San Pedro Company upon the payment to said Short Line Company by said San Pedro Company of the agreed purchase price thereof, and for other good and valuable consideration, and that it is necessary to and is for the advantage and benefit of the Short Line Company to accept and comply with the terms of an offer made to it for the purchase of the herein described railroad and property for good and valuable considerations.

Now, therefore, this indenture witnesseth, That the Oregon Short Line Railroad Company, in consideration of the sum of Five Dollars to it in hand paid at and before the execution
287 hereof, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign transfer and set over unto the San Pedro Los Angeles and Salt Lake Railroad Company and to its successors and assigns, all and singular, that part of the railroad of the Short Line Company, which is more particularly described as follows:

All that portion of said line of railroad which lies southerly from a point on the centre line of main track of said railroad fifty-seven hundred fifty-six and three-tenths (5756.3) feet southerly along said centre line from the north end of the depot building at Sandy Station, in Salt Lake County, Utah, said point being also south forty-five (45) degrees and thirty-one (31) minutes east, nineteen hundred and seventy-eight and seven-tenths (1978.7) feet from the north-

west corner of Section seven (7), in Township three (3) South, Range one (1) east, of Salt Lake Base and Meridian, and passing southerly from said described point to the south boundary of Salt Lake County and thence through Utah County and the towns of Lehi, American Fork and Provo in said county, and into Juab County, and through the towns of Nephi and Juab, in said Juab County, southerly to the south boundary of Juab County and thence through Millard County, through the towns of Leamington and Oasis, and into Beaver County and to the town of Milford in said Beaver County, a distance of two hundred and eight and fifty-four hundredths (208.54) miles, to a junction with the Utah
288 and Pacific Railroad, said junction point being at the intersection of the centre line of said railroad with the south right-of-way line of the Frisco Branch of said railroad; said point being north forty-six (46) degrees and eleven (11) minutes east, a distance of eleven hundred eighty-seven and two-tenths (1187.2) feet from the quarter corner between Sections seven (7) and eighteen (18) in Township twenty-eight (28) South, Range ten (10) west, of the Salt Lake Base and Meridian:

With a branch line of said railroad extending from a point in the centre line of the railroad above described, in said town of Milford, in Beaver County, State of Utah, which is twenty-seven hundred sixty-one and two-tenths (2761.2) feet southwesterly along the centre line of said railroad from the north end of the depot at Milford, said point being also north forty-one (41) degrees fourteen (14) minutes east, a distance of eighteen hundred eighty-eight and seven-tenths (1888.7) feet from the quarter corner between Sections seven and Eighteen, in Township twenty-eight (28) South, Range ten (10) West, of Salt Lake Base and Meridian, extending thence westerly to a terminus at the Horn Silver Ore Mill, near the town of Frisco, in said Beaver County, a distance of seventeen and forty-one hundredths (17.41) miles.

And also a said line of railroad extending from a point in the centre line of the said railroad, at Lehi Junction, in Utah County, said point being eight hundred thirty-six and one-tenth (836.1)
289 feet southerly along the center line of the main track of said railroad from the north end of the depot at Lehi Junction, said point being also north sixty-two (62) degrees and forty-seven (47) minutes west, a distance of thirty-six hundred seventy-one and five-tenths (3,671.5) feet from the south-east corner of Section five (5) in Township five (5) South, Range one (1) East, of the Salt Lake Base and Meridian, extending thence westerly through Utah County and southerly through Tooele and into Juab County, through Irontown in said Juab County, a distance of fifty-three and fifty-two hundredths (53.52) miles, to a terminus at Tintic, which is south three (3) degrees and fifty-six (56) minutes west, a distance of about ninety-four hundred and one and seven-tenths (9,401.7) feet from the southeast corner of Section (9) in Township eleven (11) south, Range three (3) West, of Salt Lake Base and Meridian.

With a branch, known as the Eureka Branch, extending from a junction at Irontown in said Juab County, said junction being located at a point on the centre line of said railroad at the switch connecting said branch line, said point being south twenty-one (21) degrees and fifty (50) minutes west a distance of twenty-one hundred forty-eight and nine-tenths (2,148.9) feet from the southeast corner of Section thirty-three (33), in Township ten (10) South, Range three (3) West, of the Salt Lake Base and Meridian, and thence northerly through Silver City Junction and Mammoth Junction to a terminus in the town of Eureka, in said Juab County, a distance of five and five-hundredths (5.05) miles, said terminus being north sixty-two (62) degrees eighteen (18) minutes east, forty-eight hundred eighty-three and three-tenths (4,883.3) feet from the south-
290 west corner of Section thirteen (13), in Township ten (10) South, Range three (3) West of Salt Lake Base and Meridian;

And, also, a branch line of railroad, known as the Silver City Branch, extending from a junction switch at Silver City Junction, in said Juab County, said switch being located at a point on the centre line of the Eureka Branch, which is north sixty-two (62) degrees and twenty-six (26) minutes east of a distance of sixteen hundred sixty-two and three-tenths (1,662.3) feet from the quarter corner between sections twenty-seven (27) and thirty-four (34), in Township ten (10) South, Range three (3) west, of Salt Lake Base and Meridian, and extending thence easterly in said Juab County, through the town of Silver City, to a terminus in said Juab County, near the Northern Spy Mine, a distance of five (5) miles, said terminus being in the southwest quarter of northeast quarter of Section thirty-two (32), Township ten (10) South, Range Two (2), West, Salt Lake Base and Meridian;

And also a branch line of railroad known as the Mammoth Branch, extending from a junction switch at Mammoth Junction, on said Eureka Branch, in said Juab County, said junction being located at a point on the centre line of said Eureka Branch, which is north sixty-two (62) degrees, and fifty-seven (57) minutes east, a distance of nineteen hundred nineteen, and one tenth (1,919.1) feet from the southwest corner of Section twenty-three (23) in Township ten (10) South, Range three (3) West, of Salt Lake Base and Meridian, extending thence easterly a distance of one and eighty-two
291 hundredths (1.82) miles, to a terminus at Mammoth Station, in the town of Robinson, in said Juab County, said terminus being south thirty-seven (37) degrees and (4) minutes east, a distance of forty-three hundred and sixty-one (4,361) feet from the northwest corner of Section twenty-five (25) in Township (10) South, Range three (3) West, of Salt Lake Base and Meridian; subject to the one-half joint ownership of the Rio Grande Western Railway Company in a portion of said branch line;

And also all the right, title and interest of the grantor in any railroad track or property owned or occupied jointly by the grantor and any other company or person within the limits of and appurtenant to the several parcels of property hereinabove described and conveyed.

Together with all of the rights of way, station grounds, water supplies, bridges, buildings, depots, fences, rights or interests in telegraph and telephone lines pertaining to said railroad, but excepting and reserving to said grantor any and all moneys and credits, engines, cars, equipment, rolling stock, track tools, station supplies, track supplies, fuel, material, hand-cars, push-cars, section supplies and section tools, and other light and movable property.

To have and to hold the said railroad properties, above described and each and every part thereof, and all the appurtenances thereunto belonging or in anywise appertaining to the said party of the second part and its successors and assigns forever, except as above excepted and reserved; and the said grantor hereby covenants
292 and agrees to, and with said grantee, that said premises are free and clear of all incumbrances, except the lien or charge created by the following mortgages:

1. The Consolidated Mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, to the Guaranty Trust Company of New York, to secure a possible issue of $36,500,000, par value, of Consolidated Mortgage bonds, of which there have been issued and certified and are now outstanding the par amount of $12,328,000.

2. The Income A Mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, to the Old Colony Trust Company, of Boston, Massachusetts, to secure a possible issue of $7,185,000 of said Short Line Company's Five Per Cent. Non-cumulative Fifty-Year Income Bonds, Series A, and of which there have been issued and are now outstanding the par amount of $7,185,000.

3. The Income B Mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, to the State Trust Company of New York to secure an issue of Collateral Trust Non-cumulative Income B Bonds not exceeding $15,000,000 in amount, of which there have been issued and are now outstanding the par amount of $14,841,000 of said bonds.

The said Short Line Company hereby covenants and agrees to and with said grantee, its successors and assigns, that it will, on the several semi-annual dates at which interest is due and payable upon said Consolidated Mortgage bonds, pay the said interest accruing thereon to the holders thereof, and that upon the maturity of said bonds it will pay the principal thereof, and that it will save, protect
293 and keep harmless the said San Pedro company, its successors and assigns, from the payment of any sum of money whatever due or to become due from said grantor on account of the said mortgage or of the debts secured thereby; and it further covenants and agrees to and with the said San Pedro Company that it will not

avail itself of the right or privilege written in said Consolidated Mortgage to issue any other or further bonds under said mortgage which shall be or become a lien or charge, or enabled to participate in a lien or charge upon any part of the property hereinabove conveyed by said Oregon Short Line Railroad Company to said San Pedro company.

The said Short Line Company covenants and agrees that it will obtain from the Union Pacific Railroad Company, which is the owner of $6,715,500 of said Income A bonds, and of $14,781,000 of said Income B bonds, the release and discharge of the hereinabove conveyed property from the lien and charge of said Income A mortgage bonds and of said Income B mortgage bonds within a reasonable time as to all of the said bonds now by the said Union Pacific Railroad Company owned and held, and that from time to time as the said Union Pacific Railroad Company may become the owner of or holder of any of the remaining outstanding Income A bonds and Income B bonds that the lien of said additional and hereafter acquired Income A bonds and Income B mortgage bonds upon said property shall in like manner be released, and that it will cause each of said releases to be obtained within a reasonable time after
294 said Union Pacific Railroad Company has become the owner of the remaining outstanding Income A mortgage bonds and Income B mortgage bonds. The releases from said Income A mortgage bonds and said Income B mortgage bonds above provided for may be made by stamping such release upon said bonds.

In witness whereof, the party of the first part has caused these presents to be signed by its Vice-President, and its corporate seal to be hereto affixed and attested by its Assistant Secretary, the day and year first above written.

OREGON SHORT LINE RAILROAD COMPANY,
[SEAL.] By W. D. CORNISH, *Vice-President.*
Attest:
JOS. HELLEN *Assistant Secretary.*

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

On the 6th day of July, A. D. 1903, personally appeared before me W. D. Cornish, who, being by me duly sworn, did say that he is the Vice President of the Oregon Short Line Railroad Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and of a resolution of its Board of Directors, and said W. D. Cornish acknowledged to me that said corporation executed the same.

Given under my hand and notarial seal at and within said said county on the day and year last aforesaid.

[SEAL.] CHARLES J. HOEHNLE,
Notary Public Kings County.

Certificate filed N. Y. Co.

295 Complainant's Exhibit 38 is as follows:

COMPLAINANT'S EXHIBIT 38. (Millar.)

TERMINUS BRANCH.

Oregon Short Line Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

DEED.

This indenture, made and entered into this 18th day of June, A.D. 1903, by and between Oregon Short Line Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called Short Line Company, party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation created by and existing under the laws of the state of Utah, hereinafter called San Pedro Company, party of the second part,

Witnesseth:

Whereas, the Short Line Company is a corporation created by and existing under the laws of the State of Utah, and has corporate power to own, and is the owner, of the rights, interests and property described in the granting clause hereof, as conveyed hereby; and

296 Whereas, said Short Line Company has power and corporate authority to sell, convey, transfer, let or lease its property and franchises, or any part thereof, to any corporation not owning any competitive line of railroad in the State of Utah; and

Whereas, said San Pedro, Los Angeles and Salt Lake Railroad Company is a corporation created by and existing under the laws of the State of Utah, but which has not acquired any line of railroad within said state, and has corporate power to acquire by constructing, purchasing, leasing or otherwise, and to equip, own, control, maintain and operate, by steam or electric power for the carriage of passengers and freight for hire, a main or trunk line of railway from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route to a terminus at East San Pedro on the shores of the Pacific Ocean, in the County of Los Angeles, in the State of California, with power in like manner to acquire various branch lines of railroad and other property; and

Whereas, said San Pedro Company has further corporate power "for the purpose of buying, owning, maintaining, operating and further extending the railroad rights, property and franchises of any railroad, corporation or corporations now or hereafter owning railroad rights, property and franchises in the state of Utah and which said railroad rights, property and franchises are, or may be, so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad hereinbefore

297 described, or a branch line or branch lines thereof and connecting with said main line;" and

Whereas, said Short Line Company, in the exercise of its corporate powers, and in accordance with due corporate action has determined to accept an offer made to it for the purchase of the railroad and other property hereinafter described, for good and valuable considerations.

Now, therefore, this indenture witnesseth, That the Oregon Short Line Railroad Company, in consideration of the sum of $5 to it in hand paid at and before the execution hereof, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over unto the San Pedro, Los Angeles and Salt Lake Railroad Company, and to its successors and assigns, all and singular the following described property and all of the property, rights and privileges of said Short Line Company therein and thereto in the condition in which the same now exists, that is to say:

All that exists and remains of the railroad, rights of way, and railroad property which heretofore constituted a part of the railroad of the Short Line Company, and which was, prior to the recent changes and modifications thereof, described as follows:

The line of railroad commencing at a point on the west bank of the Jordan River, north of Block Three (3), in Highland Park addition to the city of Salt Lake, being in the northwest quarter of the northwest quarter of Section Two (2), Township One (1) South, Range One (1) West, said point being thirty-four hundred sixty-four (3464) feet south, eighty (80) degrees and three (3) minutes west, from the intersection of the west line of Seventh West Street, in the city of Salt Lake, with the Salt Lake Base Line, and extending thence southwesterly through Salt Lake County and into Tooele County, passing through the stations known as Garfield and Erda, a distance of thirty-five and ninety-six hundredths (35.96) miles, to a terminus at Terminus Station in Tooele County, said terminus being in the northwest quarter of the northeast quarter of Section Thirteen (13), Township Four (4) South, Range Five (5) West, Salt Lake Base and Meridian:

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With a branch known as the Saltair Branch, extending from a point on the centre line of the main line as above described, at the east head-block of connecting wye of said Saltair Branch with said main line, said point being also south fifty (50) degrees and thirteen (13) minutes west twenty-five hundred and thirty-two (2532) feet from the quarter corner on the east line of Section Fifteen (15) Township One (1) South, Range Three (3) West, Salt Lake Base and Meridian, and extending thence northerly a distance of two and forty-two (2.42) miles to a terminus at the salt works of the Inland Crystal Salt Company, said terminus being thirty-eight hundred and thirty-six (3836) feet south, fifty-one (51) degrees and fifty (50) minutes west, from the quarter corner on the north line of

Section Two (2), Township One (1) South, Range Three (3) West, Salt Lake Base and Meridian.

299 Together with all existing station grounds, water supplies, bridges, buildings, depots, fences, rights or interests in telegraph lines and telephone lines, pertaining to said line of railroad, and all bath houses, platforms or ice houses, pavilions, structures or appliances now located at Garfield Beach bathing place.

Also all of the following described lands:

All of the northeast quarter of the southwest quarter of Section nineteen (19) Township one (1) south, Range three (3) west; all of Lot one (1) in Section twenty-four (24), Township one (1) south, Range four (4) west; all of the northwest quarter of the northeast quarter of Section twenty-five (25) Township one (1) south, Range four (4) west; also all of Lot five (5) in Section nineteen (19), Township one (1) south, Range three (3) west, excepting that part of said lot described as follows:

Beginning at the northeast corner of said Lot five (5), thence west two hundred and fifty (250) feet, more or less, to the water's edge of Great Salt Lake; thence south sixty-one (61) degrees west along the water's edge five hundred feet, thence south twenty-nine (29) degrees, east nineteen and five-tenths (19.5) chains, thence east sixty (60) links to the southeast corner of said Lot five, thence north twenty (20) chains to place of beginning.

Also all of the interest of the Oregon Short Line Railroad Company, being thirty-seven and five-tenths (37.5) per cent interest, in the following described tract of land: all that part of Lot

300 five (5) in Section nineteen (19) Township One (1) south, Range three (3) west, within the following limits, to wit:

Beginning at the northeast corner of said Lot five, thence west two hundred fifty (250) feet, more or less, to the water's edge of Great Salt Lake; thence south sixty-one (61) degrees west along the water's edge five hundred (500) feet; thence south, twenty-nine (29) degrees east, nineteen and five-tenths (19.5) chains; thence east sixty (60) links to the southeast corner of said Lot five (5); thence north, twenty (20) chains to place of beginning.

But excepting and reserving to the said grantor any and all moneys and credits pertaining thereto and any and all superstructures, ties, rails, spikes, bolts, nuts, tie plates, fish plates, angle bars or other track material, and all track tools or other material or supplies, and all equipment or rolling stock pertaining to said railroad and every part thereof:

To have and to hold the said lands and said part of said railroad and the said properties, and each and every part thereof, and all the appurtenances thereunto belonging or in anywise appertaining to the said party of the second part and its successors and assigns forever except as above excepted and reserved. And the said grantor hereby covenants and agrees to and with said grantee that it is lawfully seized of the said property; that it has good right to convey the same; that the grantor hereby guarantees to the grantee, its suc-

cessors and assigns, the quiet and peaceable possession thereof, and that said premises are free and clear of all incumbrances,
301 and that the grantor and its successors will forever warrant and defend the title thereof in the grantee and its successors against all lawful claims whatsoever.

In witness whereof, the party of the first part has caused these presents to be signed by its Vice President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

OREGON SHORT LINE RAILROAD COMPANY,
[SEAL] By W. D. CORNISH, *Vice-President.*

Attest:
JOS HELLEN
Assistant Secretary.

STATE OF NEW YORK,
City and County of New York, } ss.:

On the 6th day of July, A. D. 1903, personally appeared before me W. D. Cornish, who, being by me duly sworn, did say that he is the Vice President of the Oregon Short Line Railroad Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and of a resolution of its Board of Directors, and said W. D. Cornish acknowledged to me that said corporation executed the same.

Given under my hand and notarial seal at and within said county on the day and year last aforesaid.

[SEAL] CHARLES J. HOUGHLE
Notary Public Kings County

Certificate filed in N Y Co.

302 Complainant's Exhibit 39 is as follows:

COMPLAINANT'S EXHIBIT 39. (Millar)

Oregon Short Line Railroad Company and San Pedro, Los Angeles and Salt Lake Railroad Company

SALT LAKE YARD CONTRACT.

This indenture, made and entered into this eighteenth day of June, 1903, by and between the Oregon Short Line Railroad Company, a corporation of the State of Utah, hereinafter called the Short Line Company, as party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation of the State of Utah, hereinafter called the San Pedro Company, as party of the second part.

Witnesseth:

ARTICLE I.

The Short Line Company, in consideration of the covenants and agreements of the San Pedro Company, to be by it performed and

kept, and of the payments to be made by the San Pedro Company to said Short Line Company as herein provided, hereby demises and leases to the San Pedro Company for a term of ninety-nine years from the first day of July, 1903, the general and common use for its sole and separate business, as such use is hereinafter define',
303 in common with said Short Line Company, of all said Short Line Company's main tracks, side tracks, stubs, spurs, switches, cross-overs, standing places for cars, stations, signals, buildings, coal chutes, shops, round-houses, turn-tables and every other facility or property used in connection with or appurtenant to the yard and yard property and business of the Short Line Company, at Salt Lake City, Utah, (not including, however, any rolling stock or power), between the northerly yard limit of the Salt Lake City yard and a point near Sandy, about eleven and one half miles south of the southern boundary of Salt Lake City, in the County of Salt Lake in the State of Utah, and which points are hereinafter more definitely described, subject, however, to the liens and incumbrances of all existing mortgages thereon, and reserving to the Short Line Company the right to admit other corporations thereto as hereinafter set forth.

Article II.

Limits of yard.

Section 1. The description of the Short Line Company's trackage and other property hereby demised for such general and common use is as follows:

On the north: A point on the centre line of the main track of the Oregon Short Line Railroad, which is south thirty degrees and thirty-eight minutes (30° 38′) east, six hundred and eighty-five (685) feet from the intersection of said centre line of main track with the north line of section twenty-six (26), township one
304 (1) north, range one (1) west of Salt Lake Base and Meridian, said point of intersection being nineteen hundred and thirty-five (1935) feet west of the northeast corner of said section twenty-six.

On the south: A point on the centre line of the main track of the Oregon Short Line Railroad, which lies south forty-five degrees and thirty-one minutes (45° 31′) east nineteen hundred and seventy-eight and seven-tenths (1978.7) feet from the northwest corner of section (7), township three (3) south, range one (1) east of Salt Lake Base and Meridian, said point on the centre line of the main track of the Oregon Short Line Railroad being at the south end of a one-degree curve to the left, going south, the distance between the above designated boundary points, measured along the main track of the Oregon Short Line Railroad, being fifteen and six hundred and ninety-six thousandths (15.696) miles.

On the west: The westerly limit of said yard is hereby fixed upon the Terminus Branch and the Leamington Cut-off at the west bank of the Jordan River and at the western end of any and all spurs and

side tracks located on the west side of the Short Line Company's main track through said yard between the northern and southern boundaries thereof, as herein fixed.

On the east: The easterly limit of said yard is hereby fixed to embrace the eastern end of all spurs, side tracks and switches in said yard on the easterly side of the main track of the Short Line Company through said yard from the northern to the southern boundary thereof, as in this agreement defined.

305 All station grounds, franchises, tracks, appurtenances and appliances pertaining to the property above described, which the short Line Company now owns or may hereafter acquire, including the interest of the Short Line Company in any trackage within or adjacent to said demised premises now owned or hereafter acquired by Short Line Company in connection with any other company, so far as the Short Line Company may grant such use, shall constitute a yard for the general and common use of the parties hereto, and shall be managed, maintained, operated and accounted for as a yard, as hereinafter provided.

Article III.

Valuation

The lands, lots, rights of way, station grounds, franchises, tracks, buildings, structures, appurtenances and appliances pertaining to the said yard are, at the date of this lease and agreement, valued at $1,387,310.12, and are as shown by the schedule marked "Exhibit A," and the maps marked "Exhibit B," hereto attached, and identified by the signatures of the officers executing this instrument, and made a part hereof. All additions made after the date of this agreement shall be shown by supplemental schedules containing descriptions of the added property, showing the cost of the same and filed herewith.

306 ## Article IV.

Rental and share of earnings and expenses.

Section 1. The rental to be paid by the San Pedro Company to the Short Line Company shall be paid in monthly installments, and shall consist of:

(a) A proportionate share of a four per cent per annum interest charge on the current schedule valuation of the said yard, franchises and property, said current schedule valuation to be the valuation of said property then in effect, including the value of additions and betterments made to that date; the San Pedro Company's share of the interest charge to be based upon the relative uses of the property as determined by the number of cars and engines handled for the respective parties in said yard; provided, however, that the San

Pedro Company's proportion shall at no time be less than 37½ per cent of the said entire interest charge.

(b) A proportionate share on the said cars-handled-basis of all taxes, special assessments and insurance.

(c) A proportionate share on the said cars-handled-basis of the cost of maintenance, repairs and renewals of all tracks, switches, buildings, structures, appurtenances and appliances and other expenses of this nature not charged under the terms of this agreement to capital account as additions or betterments.

(d) A proportionate share on the said cars-handled-basis of the cost of operating the said yard and property and of the business conducted thereon, including the cost of furnishing switch engines or other power and of supplying the same with coal, water and other supplies; also, of all materials, supplies, labor, costs or expense incurred in repairing, maintaining and operating said yard, including a reasonable charge for general expenses and superintendence; also, the wages of all employees solely engaged in yard service, and the proportion of the wages of general or common employees or of officers properly chargeable to said yard; and also, of all sums paid or payable in satisfaction of claims for loss or damage to persons or property as hereinafter provided.

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(e) A proportionate share on the said cars-handled-basis of all rentals paid for the use of tracks, buildings or other facilities required or made use of as a part of the said yard.

SECTION 2. The rental to be paid for such engines, power and appliances as may be furnished by either party hereto for operating the said yard and the manner and time of payment shall be fixed by agreement between the General Managers of the respective companies. In the absence of such agreement the company furnishing the same shall be paid a reasonable rental monthly. The rental paid for engines shall cover all repairs (except as to accidents as hereinafter provided), and the cost of keeping the same in condition for service.

Water furnished to engines engaged in operating the said yard shall be furnished at cost. Coal, oil, waste, and other supplies used on such engines shall be paid for on the basis of cost plus ten per cent; "cost" shall include the cost of transportation to Salt Lake, store department expenses, insurance and any other proper charges contributing to the cost of such material and supplies at said yard. Like supplies, if any, furnished engines of the respective parties shall be paid for upon the same basis.

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Each company may at its election furnish any coal or other supplies for its own use upon its own engines not engaged in such yard service, and in such case such supplies may, if it requests, be handled for such company in the yard by the common yard employees, subject to the payment of a reasonable charge for any service rendered in resepct thereof.

SECTION 3. The freight stations within said yard, with their warehouses, platforms, scales, appurtenances and appliances, shall be a part of the said yard, and the expense of operating said freight sta-

tions, including the wages of all clerks, check-men, truckmen and other employees, office service and supplies used in yard service, necessary for the proper handling of freight, in carload or smaller lots, with all expenses connected therewith, shall be treated as a yard expense.

SECTION 4. The passenger stations in said yard, with express, baggage, ticket, mail and other facilities, as well as waiting-rooms and all other conveniences for the use of the public at and about such passenger stations, shall be a part of the said yard, and the expense of operating the same, including the wages of all depot-masters, ticket agents, yardmen, baggagemen, porters, mail handlers and other employees necessary for the proper handling of passengers, baggage, mail and express or other work usual in connection with the handling
309 of passenger trains and passenger business at Salt Lake for the parties hereto shall be treated as a yard expense.

SECTION 5. It is understood that the term "cars handled" as used in this indenture shall refer to the actual number of cars received into and forwarded from the said yard trackage, and each company's proportion shall be the percentage which the number of cars received into and forwarded from said yard over its lines bears to the total number of cars so received into and forwarded from said yard over the lines of both parties hereto. In all cases one engine will be counted as two cars.

SECTION 6. *Switching charges.*—All revenue derived from the handling of cars within the limits of the yard shall be applied as between the parties hereto to the reduction of the operating expenses of the yard. Charges to be made for switching cars for foreign lines or otherwise in yard service shall be fixed by the Short Line Company, but such charges shall always be reasonable and not discriminative against either party hereto or the patrons of either of them.

SECTION 7. *Demurrage.*—Demurrage accruing on cars while being held in the yard for loading or unloading shall be assessed and collected for account of the line delivering such cars into the said yard, subject to collection charges in respect thereof.

SECTION 8. *Rental of cars.*—All mileage, per diem or other
310 rentals assessed to either of the parties hereto on account of the handling of foreign cars or equipment over its lines shall be handled and settled for by the party in whose service such cars are used, and the yard shall be held accountable for only such car rentals as accrue while such cars or equipment are held in the yard, in yard service; provided that when passenger or freight cars owned or furnished by either party hereto are used in moving traffic originating at and destined to a point in the said yard, the company owning or furnishing such cars shall be paid a per diem rental equal to the amount of rental assessed or paid other lines for cars in similar service.

SECTION 9. *Shop expenses.*—So much of the labor and materials used in building, rebuilding, renewing or repairing power or rolling stock, or other work, done for the respective parties hereto, in said

shops as can be charged direct to the work being done for the respective parties shall be so charged. All other expense, which cannot be charged direct to the work performed for the parties hereto, including superintendence, clerks, storekeepers, general shop expenses and other proper charges shall be computed each month and divided between the parties hereto on the basis of the relative value of the work done for each party. Materials, labor and supplies used or furnished in connection with building, rebuilding, renewing or repairing power, rolling stock or in doing shop and round-house work for the respective parties hereto shall be charged at cost plus ten per cent such cost to include the freight charges on such
311 materials and supplies to Salt Lake, and to include all store department expense, insurance and any other proper charges contributing to the cost of such materials and supplies delivered at the shop.

SECTION 10. *Round-house expense.*—All engines entering and leaving the round-houses in said yard, will be charged a pro rata proportion of all round-house expense on the basis of the number of engines handled for each company during the month.

SECTION 11. *Coach yard.*—Cars, coaches, baggage, express, mail and combination cars shall be cleaned, watered, iced, coaled or provided with oil, gas or other lighting agent, and the expense thereof shall be settled for monthly on the basis of cost of service rendered and train supplies furnished, plus ten per cent.

SECTION 12. *Bills and payments.*—The Short Line Company will render statements of all yard earnings and bills for all work, labor, materials and other services rendered by it under the terms of this contract, in respect of the operation of said yard and the business therein performed under the terms of this agreement, by calendar months, and within thirty days after the end of each calendar month, showing the result of such operations and the proportions due from each of the parties hereto in respect thereof. The San Pedro Company covenants and agrees that it will, within fifteen days after the receipt of such statements and bills, pay the amounts shown therein to be due from it to the Short Line Company on said account. All such bills shall be made and rendered, and all payments thereof
312 shall be made, subject to corrections claimed or to be claimed within sixty days after the receipt thereof by said San Pedro Company.

ARTICLE V.

Additions and betterments.

SECTION 1. Additions to and betterments placed upon any part of the demised property shall become subject to the terms hereof, and the cost of any new line or lines of track, additional land acquired for yard purposes, any new buildings or structures, any extraordinary additions to or enlargements of buildings or structures, of all underground or overhead crossings of said premises or any part thereof,

and of rebuilding, renewing or replacing stations, buildings, structures or improvements destroyed by the elements, or which have for any reason become unserviceable, shall be added to the schedule valuation of said yard property.

SECTION 2. The cost of changing, shifting, repairing, maintaining or re-constructing any track or tracks, coal chute, water station, signal appliances or other part of said operating plant or facilities, of the making and maintaining of all grade crossings, signals, curbing, guttering, sewerage, water mains and pipes over or upon said premises or any part thereof, of minor additions to or enlargement of buildings or structures, of all repairs to buildings or other property used in said yard and of property described in Section 1 of this Article, shall be charged to operating expenses of said yard.

313 SECTION 3. The schedule value of any offices, buildings or structures of any sort embraced in said yard and included in the schedule of values, and which are worn out in the service or destroyed by the elements, or for any reason become unserviceable, after making allowance for any money realized by said Short Line Company from insurance or salvage, shall be deducted from said schedule valuation of said yard, and the said schedule value shall be charged to operating expenses and paid to said Short Line Company. In case of any withdrawal from the use of said yard of any of the lands embraced in said yard schedule there shall be deducted from the schedule value of said yard an amount equal to the schedule valuation of the ground so withdrawn.

ARTICLE VI.

Switching service by San Pedro Company.

The San Pedro Company covenants and agrees that it will, in the event of industries being established along or adjacent to its line of railroad now known as the Leamington Cut-off, or any lines of railroad or track in any manner owned or controlled by it, in proximity to Salt Lake City and within what may hereafter become the manufacturing or industrial district of said city or its suburbs or environs, and which may be reached in whole or in part by the use of said San Pedro Company's said tracks, upon request of the Short Line Company, give said Short Line Company, in respect of traffic carried or to be carried over the line of the Short Line Company or its connections, switching service to and from any and all

314 such industries in all respects equal to the service rendered in said common yard to or for either party hereto, without any discrimination whatever as to time, cost or quality of service, and upon rates therefor to be fixed by the said San Pedro Company, which rates shall always be reasonable and not in excess of rates charged by Short Line Company for similar service, and not discriminative against either party hereto or the patrons of either of them.

Article VII.

Locations for industries and leases.

Section 1. In the location of industries upon or adjacent to the said demised yard trackage or property, such locations shall be fixed and determined by the Short Line Company, but the location of industries upon or adjacent to the San Pedro Company's sole property shall be controlled by the San Pedro Company.

Section 2. The revenue derived from leases of any of the common yard property shall accrue to the interest and profit of the said yard, and be applied as between the parties hereto the reduction of the operating expenses thereof.

Article VIII.

Maintenance.

Section 1. The Short Line Company, at the common cost of the parties hereto, as herein provided, shall manage, control, maintain, operate and keep in ordinary repair, all tracks, bridges, build-
315 ings, signals, fences, structures, appurtenances and appliances belonging to or constituting a part of the said yard, being chargeable with ordinary care only.

Section 2. It shall be the duty of the San Pedro Company to give prompt notice to the Short Line Company of any defects, latent or otherwise, in tracks, switches, buildings, structures, property or appurtenance which may come to the notice of the San Pedro Company, and which in the opinion of the officers of the San Pedro Company may cause damage to trains being operated through the said yard and appurtenant property, but in no event shall the Short Line Company be liable for damages to the San Pedro Company or to persons or property in the care of the San Pedro Company because of its failure to correct or repair such defects, neither shall the San Pedro Company be liable to the Short Line Company for failure to report such defects; provided, however, that if, upon notice, such defect shall not be removed within a reasonable time after the knowledge of its existence by the Short Line Company, the San Pedro Company may make the necessary repairs and credit shall be allowed the said San Pedro Company for the same in the settlement of its current monthly account with the said yard.

Article IX.

Operation of yard.

Section 1. The Short Line Company, at the common expense of the parties hereto, as herein provided, shall have the charge, supervision and control of the said yard, and shall, through its train dis-

316 patchers, superintendents or other authorized officers, direct the movement of all locomotives, cars and trains therein, under such rules, regulations and time schedules as may be from time to time adopted by the duly authorized officers of the Short Line Company, and such officers and agents, in performing any acts or duties in the supervision, management and control of said yard or the business conducted therein, or at the stations therein, shall be deemed common employees; but said San Pedro Company's engines, cars and trains shall, in respect to such movement, be treated as equal in right with the engines, cars and trains of a similar class of the Short Line Company and any other company occupying said premises, and each company's engines, cars and trains shall have equal preference over engines, cars and trains of an inferior class belonging to or operated by the other company, or any other company occupying said premises.

SECTION 2. Each of the parties hereto shall have, under the rules referred to in the preceding section, the right to run and operate its trains, cars and engines, manned by its own employees, over the main tracks and passing tracks of the yard, for the purpose of access to depots, shops or yards, but at its own risk, it being the intention hereof to grant to the San Pedro Company the right to run its trains, cars and engines over said premises but not to insure it against the usual hazards attending the movement of trains; and neither company shall do any local business between any points upon said tracks except such as it may be compelled by law to do; provided,
317 however, that either company may handle passenger traffic between Salt Lake and Sandy and intermediate stations, for which it may charge and collect its regular rates of fare.

All revenue earned in said yard for the carriage of local freight business therein, and between points within the same, shall be collected by the Short Line Company, and the same, as between the parties hereto, shall be applied to the reduction of operating expenses of the common yard, but neither party shall be required to divide any through rate or revenue with said common yard upon business originating in and destined to points outside the same, or vice versa.

SECTION 3. All switching of any cars, including the breaking up and storing of freight trains and passenger trains, the handling of cars to and from smelters, warehouses, private tracks, transfers, industries, wagon tracks or shops, as well as the making up of trains and the switching in connection with the same, shall be done and handled by the common yard employees as the agents of both parties hereto, by power and men furnished by the common yard.

SECTION 4. The Short Line Company will employ, direct and pay all yard employees, but they shall be considered as common employees of the parties hereto, and any such employee shall be discharged upon a written request from a proper officer of either party hereto. All employees serving in the said yard will be required to act fairly and impartially in all matters relating to the handling of the cars or trains and the conduct of any of the business of either

of the parties hereto, in such manner as to give to each party
318 hereto and to the patrons of each of them equally good service.

Any sole employee of either party found by the managing superintendent of said yard to have disobeyed any of the rules in force in or over said premises, or to be guilty of negligence, or to be incompetent for duty in said yard, shall, upon the request of either party, be excluded from service within said premises.

SECTION 5. At any time, upon demand of the San Pedro Company, and after thirty days' written notice given to the General Manager of the Short Line Company by the San Pedro Company, a competent Superintendent for the said yard shall be jointly chosen by the respective Presidents of the San Pedro Company and the Short Line Company, who shall be charged with the supervision, care, management and operation of said property, to the end that the rights and privileges of the parties hereto under this agreement shall be fully secured and preserved. Said Superintendent shall be removed or discharged upon reasonable notice upon written demand of either party hereto given to the other party.

Such Superintendent shall report to and act under the immediate supervision and direction of the General Manager of the Short Line Company, and all yard employees and all sole employees of the parties hereto while in the performance of their duties to their respective employers, in said yard, or in preparing therefor, shall be under the direct supervision of said Superintendent.

SECTION 6. Schedules of trains relating to the entrance into and departure from the said yard of the trains of either
319 party hereto, shall, before their adoption, be submitted to the proper officer of the Short Line Company in charge of the operation of said yard, or in the event that the Superintendent of said yard has been appointed by the Presidents of the parties hereto, as provided for in the last preceding section, such schedules of trains of the parties hereto, before their adoption, shall be submitted to and approved by the said officer of the Short Line Company or said Superintendent, to the end that the movements of trains of the respective companies shall not conflict.

ARTICLE X.

Loss and damage.

SECTION 1. As between the parties hereto, claims for loss and damage shall be settled as in this article provided.

SECTION 2. Train dispatchers, operators, switchmen, section-men, watchmen, flagmen, signalmen, switch foremen, yard superintendents, and assistants, freight handlers, truckmen, checkmen, clerks, station agents and their assistants, baggage men, janitors, and all other persons employed in the performance of any duty incident to the common use and operation of said yard, and the transaction of freight and passenger business at or through the passenger stations or

freight stations, or any other business embraced within this agreement, while employed therein, although paid by the Short Line Company, shall be considered as common employees. All employees shall assist the employees of either company in case of any
320 derailment or other accident. Any casualty, loss or damage to either party occasioned by the carelessness or default of any common employee engaged in the performance of yard or station work shall be borne by the party suffering the loss.

SECTION 3. Each company shall be solely responsible for accidents and casualties occurring upon or to its engines, cars and trains, or to persons or property in its care, arising out of any defects or failures of the track, structures, appurtenances and appliances, or from the misplacement of switches, mistakes in setting signals, errors of train dispatchers, telegraph operators, flagmen, switchmen, watchmen, or from any cause whatever, except such as may be occasioned by the engines, cars or trains of both companies colliding or occasioned through the fault of the trainmen; and in such cases of collision or such other accident or casualty, occasioned through the fault of the trainmen, the company whose trainmen are at fault shall pay all damages accruing to the other company, to persons and to property; and in case such collision, casualty or accident is occasioned by the fault of the employees of both parties, or by the fault of one or more of the common employees of the parties hereto, or by the fault of a sole employee of one of the parties and one of said common employees, then each party shall bear all the loss and pay all the damages or injury caused thereby, to its own property or to the property under its control, or to its employees or to its passengers.

In case of any injury to the person or damages to the property of any other person, not above provided for, resulting from any
321 collision or accident occasioned by the common fault of the sole employees of the respective parties, the loss or damage shall be borne equally by the parties hereto. If any such loss or damage is occasioned by the fault of one or more of the common employees of the parties hereto, the loss or damage shall be borne or paid as a common yard expense. If any such loss or damage is occasioned by the fault of employees of one of the parties and the fault of a common employee the loss or damage shall be borne and paid one-half by the party hereto whose employee was in fault and one-half as a common yard expense.

For the purposes of this agreement the common employees are those described in the last preceding section or others engaged in any common service.

SECTION 4. If, however, the San Pedro Company shall notify the general managing officer of the Short Line Company in writing that any common employee is negligent or incompetent, and if upon investigation within thirty days after such objection or notice is found to be well taken, then the Short Line Company shall be liable

to the San Pedro Company for all damages resulting after the completion of said investigation to its property and employees and to the property under its charge and to its passengers or to other persons, caused by the negligence or incompetence of such common employee.

SECTION 5. It is agreed that the Short Line Company shall not be liable for any loss or damage occurring upon said demised premises caused by the acts or omissions of the sole employees of the
322 San Pedro Company, or by the acts or omissions of the sole employees of any other company or companies that may be admitted to the use of said premises; nor shall the Short Line Company be liable for loss or damage to the trains of the San Pedro Company caused by collision with the trains of any other company or companies that may be admitted to the use of said premises. But nothing in this section contained shall be construed as exempting the Short Line Company from liability for any loss or damage that may be sustained by the San Pedro Company or its employees, which is caused by the negligent acts or omissions of the sole employees of the Short Line Company.

SECTION 6. When an injury or damage to persons or property shall result from the movement of trains, engines or cars through said yard, or in the conduct of the business carried on in said yard, and the responsibility for the injury or damage cannot be definitely fixed upon the particular train, engine or car which was the cause of such injury, or if it cannot be determined whose servants caused the said injury, loss or damage, compensation shall be made to the person entitled thereto, and the cost thereof shall be treated as a common yard expense and paid accordingly. No "concealed" loss or damage to freight shall be chargeable to the common yard by either party hereto, nor shall the common yard be charged for any loss or damage to persons or property, except as in this Article provided.

SECTION 7. If freight is lost or damaged while in, or while in
323 transit through said yard, after the same has been delivered to said common yard, and before the same shall have been delivered by said common yard to the party hereto who is to carry the same beyond the said yard, or before delivery thereof by said common yard to the consignee, if the same is consigned to a person or to a point within or reached by said common yard, it shall be treated as a loss chargeable to the operating expenses of said yard and the amount of said loss shall be paid as a common yard expense.

SECTION 8. Property and freight, including freight, passenger and other equipment, shall be considered as delivered to the common yard and to its employees, when the trains or cars carrying the same shall have been set upon any track or tracks within the limits of said common yard designated by the Superintendent or Manager of the same as the track or tracks for receiving from a party hereto, any trains or cars to be handled by the common yard.

SECTION 9. Property and freight (including freight, passenger and other equipment) shall be deemed to have been delivered to a party hereto when the same, or the cars containing the same, have been set

or placed upon a track or tracks in said yard, designated by the Superintendent or manager of said yard as the track or tracks for delivering to the respective parties, trains or cars to be carried or taken to destination, either within or beyond said yard.

SECTION 10. In the case of loss or damage to freight coming
324 into or leaving said yard (over foreign lines), which is delivered to the common yard for yard switching only, and which is lost or damaged while in the hands and control of the yard crews or yard employees, being handled to its destination track or place of delivery, it shall be treated and settled for as a yard expense.

SECTION 11. The Short Line Company is authorized to settle and adjust all such claims by third persons for loss, damage or injury to persons or property occurring in the operation of the yard, and the sums paid upon such settlements shall be charged as hereinbefore provided.

SECTION 12. All claims for loss or damage to baggage occurring upon said premises, including the kind called concealed losses, shall be settled as between the parties hereto in the same manner as claims for loss and damage to freight are herein provided to be settled.

SECTION 13. Neither party hereto shall be liable to the other for any loss or damage which may occur to property or persons by reason of fire emitted from locomotives operated in said yard, whether the same is emitted or permitted to escape through negligence or otherwise, or which arises from spontaneous combustion or explosion of goods stored in warehouses or while in cars. Each party hereto shall bear its own losses arising from the causes defined in this section, whether to its own property or to property in its custody as a carrier or warehouseman, and for this purpose the freighthouses and storehouses in
said yard and the cars of either party while upon the tracks of
325 the station shall be deemed to be the warehouse of the party which has carried or is to carry the freight or the goods contained therein. Money received from any insurance company or insurance fund in respect of any fire loss shall, however, be paid as between the parties hereto to the parties owning or responsible for the property in respect of which said money is paid.

SECTION 14. Each party hereto shall pay and satisfy any and all lawful claims for injuries to persons or property inflicted at the crossings of public streets, alleys or highways, or to tresspassers, or to live stock, upon the tracks within said yard, by the respective trains, engines or cars of the parties while such trains, engines or cars are in the custody of the sole employes of such party. Such injuries, when inflicted by or through the negligence of common employees, as in this article defined, shall be treated as an operating expense of said yard.

SECTION 15. The San Pedro Company hereby covenants and agrees to and with the Short Line Company that it will pay all damages for which a legal liability may arise against the Short Line Company, for or on account of injuries to persons or property which may occur on or be occasioned by the engines, cars or trains of said San Pedro Com-

pany while within the said yard and upon the tracks thereof, except in case of collision through the negligence of trainmen or other sole employees of the Short Line Company, or of common employees as hereinbefore defined.

326 ARTICLE XI.

Shops.

SECTION 1. In case the Short Line Company shall determine that it is necessary to construct new shops, or to materially add to or enlarge the present shops, it shall notify the San Pedro Company of such determination, and thereupon and within sixty days after such notice, the San Pedro Company shall decide and notify the Short Line Company as to whether said San Pedro Company desires to make use of such new, enlarged or additional shops, and in case said San Pedro Company decides to make use of such shops in common with the Short Line Company, such new, enlarged or additional shops shall be constructed within said yard limits (or if the parties hereto agree thereto outside the same), and be operated under the general provisions of this agreement; and thereupon such new, enlarged or additional shops shall be used by both said Short Line Company and said San Pedro Company for such work as each of said companies may reasonably require to be done at Salt Lake City.

SECTION 2. In case said San Pedro Company shall elect not to make common use of said new, enlarged or additional shops, then such shops may be erected and operated by the Short Line Company for its sole use, and shall not be included in or operated as a part of the common yard property, and the provisions of this agreement shall not apply thereto; and in case the San Pedro Company shall elect not to make common use of such new, enlarged or additional shops it
327 shall, upon six months' notice from the Short Line Company, remove from and cease to use any part of the shop facilities and shop property in this agreement described, and provide itself with its own shops and shop facilities outside the common yard for its own sole use, and thereupon the schedule valuation of said yard property shall be reduced by deducting therefrom the schedule value of said shop property from the use of which the San Pedro Company is thereby excluded, and the Short Line Company shall also be at liberty to remove or destroy the said old shops and devote the land upon which the same stand to its own or to the common yard purposes.

SECTION 3. In case the San Pedro Company shall elect to abandon the common use of the present shops and shop facilities it may do so upon giving the Short Line Company one year's notice of such election, and at the end of such one year it may entirely abandon the use thereof, and thereupon the then valuation of said yard shall be reduced by deducting therefrom the amount of the schedule valuation of the said shop property the use of which is so abandoned by said company; but this provision shall not apply in respect of any

new, enlarged or additional shops or shop facilities provided by the Short Line Company as in this article hereinabove provided for.

ARTICLE XII.

Telegraph.

The San Pedro Company shall have the right (so far as the Short Line Company can grant such right) to the common use of all
328 telegraph lines, including poles, wires and appurtenances now owned or shared by the Short Line Company and located within the limits of the yard, provided that the San Pedro Company shall bear a just proportion of the expense, repairs and maintenance of such lines; and provided that the San Pedro Company shall bear the entire cost of construction and expense of maintenance of any additions to or extensions of such lines made necessary by its use of the same, and the San Pedro Company shall be required to make such additions whenever in the judgment of the Short Line Company it shall become necessary.

ARTICLE XIII.

Other lines entering yard.

The Short Line Company may admit any other company operating a railroad to the general and common use of the property and facilities covered by this lease and agreement or any portion thereof upon such terms as it may see fit; provided that such other company shall be admitted only upon such terms as shall be fair and equitable as between the parties hereto and not more favorable than the terms enjoyed by the San Pedro Company.

The revenues derived from such other company or companies for the use of all or any portion of the property and facilities covered by this lease and agreement shall be applied as between the parties hereto to the reduction of the yard operating expenses.

329 ARTICLE XIV.

Accounts and collections.

SECTION 1. The San Pedro Company shall have the right at any time to examine the books and accounts showing the cost of maintenance and operation of the yard, the earnings and expenses thereof, and the moneys received from any source for its use or account, and if so desired by either of the parties hereto statements shall be rendered monthly and forwarded to the General Manager of each of the parties hereto, showing cars handled, engines used, cost of maintenance and operation and such data as may be required relative to the business done.

SECTION 2. The Short Line Company is hereby made the agent of the San Pedro Company to receive and to receipt for any and all moneys payable or collectible at any of the stations in said yard for freight earnings or upon the sale of passenger tickets or for the carriage of persons or property on behalf of the San Pedro Company. It shall be the duty of the Short Line Company to preserve for the use of the San Pedro Company, expense bills or other documents or records pertaining to any of such moneys collected for the use of the said company or pertaining to that business, and to promptly account for and remit to said San Pedro Company any funds or moneys so received by it at such times, in such manner and to such persons as may be directed by the General Auditor of the San Pedro Company and approved by the General Auditor of the Short Line Company.

330 ARTICLE XV.

Default.

If the San Pedro Company shall fail to make the payments herein provided as the same shall become due, and such failure shall continue for six consecutive calendar months after a default adjudged by the referees or a Court of competent juridiction, then and in such case, this indenture shall, at the option of the Short Line Company cease, terminate and become void thence forward, and the Short Line Company may re-enter and take possession of all of said described property as of its first and former estate, but without prejudice to its right to recover for all arrearages.

ARTICLE XVI.

Arbitration.

Any matter of difference between the parties which may arise having reference to this agreement, either as to its construction or any alleged violation of its provisions, or refusal to perform any duties which it may be claimed that it imposes, or as to any amount claimed to be due from one party to the other, and which cannot be amicably adjusted, may be, on demand of either party, submitted to three disinterested persons experienced in railroad operation as arbitrators. The party demanding such reference shall give to the other party notice of such demand, stating specifically the question to be submitted for decision, and nominating a person to act as one referee.

331 If, at the expiration of twenty days from the receipt of such notice the party receiving it, has not notified the party demanding the reference of its nomination of a second referee, the party making the demand may make such selection. The first and second referees chosen shall select a third.

If the two referees chosen shall be unable to agree upon a third referee, such third referee may be appointed upon ten days' notice upon motion of either party, by a judge of the Circuit Court or District Court of the United States within and for the District of Utah.

When the board is complete the referees shall fix a day and place for the hearing of which the parties shall be severally notified.

After hearing the testimony and arguments which may be submitted by each party, the referees, or a majority of them, agreeing upon an award, shall state it in writing, which they shall deliver to each party, and when delivered to both parties it shall be binding and conclusive upon each, and each party hereby expressly agrees to be conclusively bound thereby. If either party shall refuse to keep and perform such award the adverse party may enforce the same by apt proceedings in any court of law or equity, and shall have the right, if such refusal shall continue for twelve consecutive calendar months, upon its own election, expressed in writing, to declare this indenture terminated and of no further effect or obligation, which forfeiture shall take place one year from the day on which notice thereof is served upon the delinquent party.

332 ARTICLE XVII.

Use during arbitration.

No difference which may arise as to the construction or performance of any of the covenants, promises and agreements, herein contained, shall affect while it remains undetermined the common use of the property covered by this lease and agreement in the manner in which such common use has theretofore been enjoyed; but such use shall continue and settlements and payments be made as before the existence of such difference, and when it is finally determined by referees as above provided, or otherwise, payments and restitutions shall be made by the respective parties as may be required by the award of the referees or provided in the agreement of adjustment as the case may be.

ARTICLE XVIII.

If for any reason any of the covenants, promises and agreements in any portion of this lease and agreement expressed shall be adjudged void or shall not be performed according to the tenor of this agreement, neither such adjudication nor such failure to perform, except that default mentioned in Article XV, shall affect the validity or obligation of any other covenant, promise or agreement in this lease expressed, which is in itself valid. Such defaults in performance shall be the subject of arbitration. The arbitrators shall have no power to abrogate the terms of this agreement, but may award damages for any such default in performance, and shall re-
333 quire future performance of all such conditions.

A controversy as to the construction or validity of any covenant, promise or agreement shall not delay the performance of any other. In the event of a failure in law of any of the covenants, promises or agreements herein contained, such steps shall be taken and such new contract or contracts made as shall be advised by

counsel or the court to be necessary to carry into effect the true spirit, purposes and intent of this entire agreement.

ARTICLE XIX.

It is mutually agreed and covenanted by the respective parties hereto, each for itself and for its successors and assigns, that during the continuance of the term created by this lease and agreement it will maintain its corporate organization and will take steps to properly provide for the renewal and extension of its corporate existence, and for the due performance of all and every act which by law may be required to be done to carry out the purposes of this article.

In testimony whereof, the said companies have caused this lease and agreement to be signed by their respective Presidents and attested by their respective Secretaries, and their respective corporate seals to be hereunto affixed the day and year first above written.

Signed in duplicate.

OREGON SHORT LINE RAILROAD COMPANY,
[SEAL.] By E. H. HARRIMAN, *President.*

Attest: JOS. HELLEN,
Asst. Secretary.

SAN PEDRO, LOS ANGELES AND
SALT LAKE RAILROAD COMPANY,
[SEAL.] By W. A. CLARK, *President.*

Attest:
A. HALLER, *Secretary.*

334 Complainant's Exhibit 40 is as follows:

COMPLAINANT'S EXHIBIT 40. (Millar.)

Utah and Pacific Railroad Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

DEED.

This indenture, made and entered into this ninth day of June, A. D. 1903, by and between the Utah and Pacific Railroad Company, a corporation created by and existing under the laws of the state of Utah, hereinafter called the Utah and Pacific Company, party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the San Pedro Company, party of the second part, witnesseth:

Whereas, the Utah and Pacific Company has corporate power to own and is the owner of a certain line of railroad, extending from a junction with the Oregon Short Line Railroad Company's railroad at Milford, Utah, in a southwesterly direction to a connection with the railroad of the Utah, Nevada and California Railroad Company on the Utah-Nevada state line, near Uvada, Utah, a distance of
335 seventy-four and sixty-one one-hundredths (74.61) miles; and

Whereas, said Utah and Pacific Company, amongst other

powers given and granted to it, has power and corporate authority to sell, convey, transfer, let or lease its property and franchises, or any part thereof, to any corporation not owning any competitives line of railroad in the State of Utah; and

Whereas, said San Pedro, Los Angeles and Salt Lake Railroad Company is a corporation created by and existing under the laws of the State of Utah, but which has not acquired any line of railroad within said state, and has corporate power to acquire by constructing, purchasing, leasing or otherwise, and to equip, own, control, maintain and operate by steam or electric power for the carriage of passengers and freight for hire, a main or trunk line of railway from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route to a terminus at East San Pedro on the shores of the Pacific Ocean, in the County of Los Angeles, in the State of California, with power in like manner to acquire various branch lines of railroad and other property; and

Whereas, said San Pedro Company has further corporate power "for the purpose of buying, owning, maintaining, operating and further extending the railroad rights, property and franchises of any railroad corporation or corporations now or hereafter owning railroad rights, property and franchises in the State of Utah, and
336 which said railroad rights, property and franchises are, or may be, so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad hereinbefore described, or a branch line or branch lines thereof and connecting with said main line"; and

Whereas, said Utah and Pacific Company, in the exercise of its corporate powers, and in accordance with due corporate action, has determined to accept an offer made to it for the purchase of the railroad and other property hereinafter described, for good and valuable considerations.

Now, therefore, this indenture witnesseth, That the said Utah and Pacific Railroad Company, in consideration of the sum of Five dollars to it in hand paid at and before the execution hereof, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over unto the San Pedro, Los Angeles and Salt Lake Railroad Company, and to its successors and assigns all and singular the following described line of railroad, and all of the property rights and privileges of the said Utah and Pacific Railroad Company therein and thereto belonging.

All that line of railroad known as the Utah and Pacific Railroad, extending from its junction with the Oregon Short Line Railroad, in
the town of Milford, Beaver County, Utah, said point of junc-
337 tion being at the intersection of the centre line of the main track of the Utah and Pacific Railroad with the south boundary line of the right of way of the Frisco branch of the Oregon Short Line Railroad, said point of junction being north forty-six (46) de-

grees and eleven (11) minutes east, a distance of eleven hundred eighty-seven and two-tenths (1187.2) feet from the quarter corner between Sections seven (7) and eighteen (18), in Township twenty-eight (28) south, Range ten (10) west, of Salt Lake Base and Meridian; thence in a southwesterly direction through the County of Beaver, into the County of Iron, and through the stations of Lund and Modena, a distance of seventy-four and sixty-one hundredths (74.61) miles to a point on the west boundary of said Iron County and the west boundary of the State of Utah, said point being north along said boundary line a distance of eighteen hundred and ninety-five and four-tenths (1895.4) feet from Mile Post two hundred and fifty-one (251) of said boundary line survey; together with all and singular the franchises, rights of way, lands, station grounds, water supplies, tracks, bridges, buildings, turn-tables, shops, depots, shop tools, fences, rights or interest in telegraph and telephone lines, pertaining to said line of railroad, excepting and reserving to said grantor any and all moneys and credits, and any and all equipment, rolling stock, track tools, station supplies, track supplies, fuel, material, hand cars, push cars, and section tools and supplies, and all other light and movable property.

To have and to hold the said railroad and properties, and each and every part thereof, and all the appurtenances thereunto be-
338 longing or in any wise appertaining unto the said party of the second part and its successors and assigns forever, except as above excepted and reserved.

In witness whereof the party of the first part has caused these presents to be signed by its President and its corporate seal to be hereto affixed and attested by its Secretary, the day and year first above written.

UTAH AND PACIFIC RAILROAD COMPANY.
[SEAL] By W. H. BANCROFT, *President.*

Attest:
G. K. SMITH, *Secretary.*

STATE OF UTAH, }
County of Salt Lake. } ss.

On the 9th day of June, A. D. 1903, personally appeared before me W. H. Bancroft, who, being by me duly sworn, did say that he is the President of the Utah and Pacific Railroad Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws and of a resolution of its Board of Directors, and said W. H. Bancroft acknowledged to me that said corporation executed the same.

Given under my hand and notarial seal at and within said county on the day and year last aforesaid.

[SEAL] CHAS. D. SAVERY
Notary Public.

My Com. expires Dec. 9, 1904.

339 Complainant's Exhibit 41 is as follows:

COMPLAINANT'S EXHIBIT 41. (Millar)

Utah, Nevada and California Railroad Company, to San Pedro, Los Angeles and Salt Lake Railroad Company.

DEED.

This indenture, made and entered into this ninth day of June, A. D. 1903, by and between the Utah, Nevada and California Railroad Company, a corporation created by and existing under the laws of the State of Nevada, hereinafter called the Nevada Company, party of the first part, and San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the San Pedro Company, party of the second part, witnesseth:

Whereas, the Nevada Company has corporate power to own, and does own, a certain line of railroad beginning at its point of connection with the railroad of the Utah and Pacific Railroad Company on the Utah-Nevada state line near Uvada, Utah, and extending in a southerly direction to Calientes, Nevada, a distance of about 40.47 miles, and also owns a partially constructed grade, and part
340 of the right of way for a railroad between said Calientes and Pioche, Nevada, and also owns a partially constructed grade, and part of the right of way for a railroad, extending in a southerly direction from said Calientes; and

Whereas, said Nevada Company, amongst other powers given and granted to it, has pow and authority to sell, convey, transfer, let or lease its property and franchises, or any part thereof, to any corporation not owning any competitive line of railroad in the State of Nevada; and

Whereas, said San Pedro, Los Angeles and Salt Lake Railroad Company is a corporation created by and existing under the laws of the State of Utah, which has not acquired any line of railroad within said state, and has amongst other powers corporate power to acquire by constructing, purchasing, leasing, or otherwise, and to equip, own, control, maintain and operate by steam or electric power for the carriage of passengers and freight for hire, a main or trunk line of railway from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route to a terminus at East San Pedro on the shores of the Pacific Ocean, in the County of Los Angeles, in the State of California, with power in like manner to acquire various branch lines of railroad and other property; and

Whereas, said Nevada Company, in the exercise of its corporate powers, and in accordance with due corporate action, has determined to accept an offer made to it for the purchase of the railroad and other property hereinafter described, for good and valuable considerations.

341 Now, therefore, this indenture witnesseth, That the Utah, Nevada and California Railroad Company, in consideration of the sum of Five Dollars to it in hand paid at and before the execution hereof, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over, unto the San Pedro, Los Angeles and Salt Lake Railroad Company, and to its successors and assigns, all and singular the following described railroad and property, and all of the property rights and privileges of the said Nevada Company therein and thereto belonging, but subject to all valid tax titles and tax liens:

All that line of railroad extending from a connection with the Utah and Pacific Railroad at a point on the dividing line between the states of Utah and Nevada, said point being north along said boundary line a distance of eighteen hundred ninety-five and four-tenths (1895.4) feet from Mile Post two hundred and fifty-one (251), on said boundary; thence in a westerly direction a distance of forty and forty-seven hundredths (40.47) miles to a point at Calientes, in said Lincoln County, Nevada, said point being south fifty (50) degrees nineteen (19) minutes west, a distance of thirty-four hundred forty-one and eight-tenths (3441.8) feet from the northeast corner of Section eight (8), Township four (4) South, Range sixty-seven (67) East, of Mount Diablo Base and Meridian; also a partially constructed grade and part of the right of way for a railroad between said Calientes and Pioche, Nevada; also the

342 right title and interest of said Nevada Company in a partially completed grade and part of the right of way for a railroad extending in a southwesterly direction from said Calientes.

Together with all of the rights of way, land, station grounds, water supplies, bridges, buildings, depots, fences, rights or interests in telegraph and telephone lines pertaining to said property, excepting and reserving to said grantor, and its successors, any and all moneys and credits and any and all equipment, rolling stock, track tools, station supplies, track supplies, fuel, material, hand cars, push cars, section supplies, and section tools and supplies, and all other light and movable property.

To have and to hold the said lands, railroad and properties, and each and every part thereof, and all the appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part and its successors and assigns forever.

In witness whereof the party of the first part has caused these presents to be signed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, the day and year first above written.

UTAH, NEVADA AND CALIFORNIA RAILROAD COMPANY.
[SEAL] By W. H. BANCROFT, *President.*

Attest:

G. K. SMITH, *Secretary.*

343 STATE OF UTAH,
City and County of Salt Lake, } ss.

On the 9th day of June, A. D. 1903 personally appeared before me W. H. Bancroft, who being by me duly sworn, did say that he is the President of the Utah, Nevada and California Railroad Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and of a resolution of its Board of Directors, and said W. H. Bancroft acknowledged to me that said corporation executed the same.

Given under my hand and notarial seal at and within said county on day and the year last aforesaid.

[SEAL.] CHAS. D. SAVERY,
Notary Public.

My Com. expires Dec. 9, 1904.

344 Complainant's Exhibit 42 is as follows:

COMPLAINANT'S EXHIBIT 42. (Millar.)

New East Tintic Railway Company to San Pedro, Los Angeles and Salt Lake Railroad Company.

DEED.

This indenture made and entered into this 9th day of June, A. D. 1903, by and between the New East Tintic Railway Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the Tintic Company, party of the first part, and the San Pedro, Los Angeles and Salt Lake Railroad Company, a corporation created by and existing under the laws of the State of Utah, hereinafter called the San Pedro Company, party of the second part, witnesseth:

Whereas, said Tintic Company has corporate power to own and does own about two miles of railway line in Juab County, Utah, extending from a connection with the lines of the Oregon Short Line Railroad Company and the Rio Grande Western Railway Company, at Mammoth Station, to various mining properties in the Tintic Mining District in said Juab County, all of which is more particularly described hereinafter; and

345 Whereas, said Tintic Company has power and corporate authority to sell, convey, transfer, let or lease its property and franchises, or any part thereof, to any corporation not owning any competitive line of railroad in the State of Utah; and

Whereas, said San Pedro, Los Angeles and Salt Lake Railroad Company is a corporation created by and existing under the laws of the State of Utah, which has not acquired any line of railroad within said state, and has corporate power to acquire by construction, purchasing, leasing, or otherwise, and to equip, own, control, maintain and operate by steam or electric power for the carriage of passengers

and freight for hire, a main or trunk line of railway from Salt Lake City, in the County of Salt Lake, in the State of Utah, by what shall appear to be the most feasible and favorable route to a terminus at East San Pedro on the shores of the Pacific Ocean, in the County of Los Angeles, in the State of California, with power in like manner to acquire various branch lines of railroad and other property; and

Whereas, said San Pedro Company has further corporate power "for the purpose of buying, owning, maintaining, operating and further extending the railroad rights, property and franchises of any railroad corporation or corporations now or hereafter owning railroad rights, property and franchises in the State of Utah, and which said railroad rights, property and franchises are, or may be, so situated and located as to conveniently and appropriately become and be made a portion of the said main line of railroad here-
346 inbefore described, or a branch line or branch lines thereof and connecting with said main line;" and

Whereas, said Tintic Company, in the exercise of its corporate powers, and in accordance with due corporate action, has determined to accept an offer made to it for the purchase of the railroad and other property hereinafter described for good and valuable considerations.

Now therefore this indenture witnesseth That the said New East Tintic Railway Company, in consideration of the sum of Five Dollars to it in hand paid at and before the execution thereof, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over unto the San Pedro, Los Angeles and Salt Lake Railroad Company, and to its successors and assigns, all and singular the following described railroad, and all of the property rights and privileges of the said Tintic Company therein and thereto belonging:

All that line of railroad known as the New East Tintic Railway, extending from the switch connecting said New East Tintic Railway with the Mammoth branch of the Oregon Short Line Railroad, said switch being located opposite the depot building of the Oregon Short Line Railroad at Mammoth Station, in the Town of Robinson, sometimes called Mammoth, in the county of Juab, State of Utah, about forty-five (45) feet southwesterly from the northwest corner of said depot, and being also south forty-four (44) degrees two (2)
347 minutes east, a distance of forty-one hundred and seven and eight-tenths (4,107.8) feet from the northwest corner of Section twenty-five (25), Township ten (10) south, Range three (3) west, Salt Lake Base and Meridian; thence southwesterly to a switch-back, thence easterly and northeasterly a total distance of one and ninety-nine hundredths (1.99) miles, to a terminus near the Mammoth mine, said terminus being about eighty-five (85) degrees seventeen (17) minutes east, a distance of thirteen hundred eighty-four and four-tenths (1,384.4) feet from the northwest corner of Section thirty

(30), in Township ten (10) south, Range two (2) west, Salt Lake Base and Meridian, including the right, title and interest of the grantor in any railroad track or property owned or acquired jointly or in common by the grantor and any other company or person, together with all and singular the rights of way, station grounds, water supplies, tracks, bridges, buildings, shops, depots, shop tools, fences, with all rights or shares in telegraph or telephone lines or other property pertaining to the line of railroad hereby conveyed, excepting and reserving to said grantor any and all moneys and credits and any and all equipment, rolling stock, track tools, station supplies, track supplies, fuel, material, hand cars, push cars and section tools and supplies, and all other light and movable property.

To have and to hold the said railroad and properties, and each and every part thereof, and all the appurtenances thereunto belonging or in anywise appertaining, unto the said party of the
348 second part and its successors and assigns forever, except as above excepted and reserved.

In witness whereof the party of the first part has caused these presents to be signed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, the day and year first above written.

NEW EAST TINTIC RAILWAY COMPANY.
[SEAL.] By W. H. BANCROFT, *President.*
Attest:
G. K. SMITH, *Secretary.*

STATE OF NEW YORK,
City and County of New York, } *ss.*

On the 26th day of June, A. D. 1903, personally appeared before me W. H. Bancroft, who being by me duly sworn, did say that he is the President of the New East Tintic Railway Company, and that said instrument was signed in behalf of said corporation by authority of its by-laws, and of a resolution of its Board of Directors, and said W. H. Bancroft acknowledged to me that said corporation executed the same.

Given under my hand and notarial seal at and within said county on the day and year last aforesaid.

CHARLES J. HOEHNLE,
[SEAL.] *Notary Public, Kings County.*
Certificate filed in N. Y. Co.

349 Q. Will you please give the president and general officers of the Pacific Mail Steamship Company.

A. The following officers were elected June 22, 1905, which appears to be the latest I have at hand: E. H. Harriman, president; R. P. Schwerin, vice-president and general manager; William Mahl, comptroller; H. S. Bradt, assistant comptroller; Alex. Miller, secretary; Joseph Hellen, assistant secretary.

Q. Who was general auditor?

A. Erastus Young, general auditor.

Q. Have you any other vice-president?

A. No, sir.

Q. That is sufficient, unless you have the board of directors there.

A. I have the board elected May, 1905.

Q. All right, give us the board of directors.

A. Maxwell Evarts, George J. Gould, E. H. Harriman, George H. Macey, Ogden Mills, Russell Sage, R. P. Schwerin, James Speyer, and Paul M. Warburg.

Q. Have there been any changes in that board since that time?

A. My recollection is that Mr. Speyer and Mr. Warburg have resigned, but I think the vacancies have not been filled.

Q. Mr. Sage is dead?

A. Mr. Sage has died in the meantime.

Q. Has that vacancy been filled?

A. No, sir; I think not.

Q. The Southern Pacific Company controls the Pacific Mail Steamship Company, does it not?

A. It owns a small amount over half of the stock, yes, sir.

Q. It elects the officers and elects the board of directors?

A. I do not know how that is; I think not.

Q. Well, the general officers, president and auditor and comptroller, are the same as the Union Pacific?

A. Yes, sir.

Q. And the accounts are kept in the Union Pacific offices?

350 A. Oh, no.

Q. Well, at 120 Broadway?

A. Oh, yes, the financial transactions are under the charge of Mr. Mahl.

Q. And Erastus Young at Omaha is the general auditor?

A. The general auditor, yes, sir.

Q. Mr. Stubbs has jurisdiction over the steamships as traffic director?

A. I hardly think so.

Q. You do not know?

A. I think not. I do not think he is an officer of that company at all.

Q. Do you know the officers of the Portland & Asiatic Steamship Company?

A. Yes, sir.

Q. Please give them.

A. (Referring to book.) E. H. Harriman, chairman of board and president; William D. Cornish, vice-president; R. P. Schwerin, vice-president and general manager; W. R. Litzenberg, secretary; F. V. S. Crosby, treasurer; Erastus Young, general auditor; H. E. A. Railton, auditor.

Q. Now, Mr. Crosby is what?

A. Treasurer.

Q. He lives in Portland?

A. No, he is a New York man.

Q. What connection does he have with the other Pacific companies?

A. He is treasurer of the Union Pacific and the Oregon Short Line.

Q. Is he also treasurer of the Southern Pacific?

A. No, he has no connection with it.

Q. What position does Mr. Schwerin hold with any of the Pacific companies?

A. He is vice-president and general manager of the Pacific Mail and the Portland & Asiatic.

351 Q. Now take up the Occidental & Oriental Steamship Company. I notice the stock of that company in the annual reports of the Union Pacific Railroad Company from time to time, together with the dividends declared thereon, one year $25,000, another year $50,000. Do you know whether the Union Pacific owns the stock of the Occidental & Oriental Steamship Company?

A. It does.

Q. It does?

A. Oh, well, I mean only a part of the stock. It does not own all.

Q. Does not own all of it?

A. Just one-half as I understand.

Q. Who owns the other half?

A. The various shareholders on the Pacific Coast.

Q. Individuals?

A. Partly individuals and partly, as I testified before, the Southern Pacific Company.

Q. The Southern Pacific and the Union Pacific jointly own control of the Occidental and Oriental Steamship Company?

A. That is my understanding, yes, sir.

Q. Do you know the officials of that company?

A. Yes, sir.

Q. Well, give them?

A. R. P. Schwerin is president; W. F. Herrin, vice-president; David D. Stubbs, secretary and general manager.

Q. Mr. Herrin is counsel for the Southern Pacific road, living at San Francisco, is he not?

A. Yes, sir.

Q. Does he also represent the Union Pacific road at San Francisco?

A. Not to my knowledge.

Q. Mr. Schwerin is general manager of the Pacific Coast Steamship Company, isn't he?

A. No, Pacific Mail Steamship Company.

352 Q. And also general manager of the Occidental & Oriental Steamship Company?

A. Yes, sir.

Q. You do not know who owns the other half interest, or not quite half—the minority stock in the Pacific Mail, do you?

A. I know it is very widely scattered, Mr. Kellogg.

Q. Then, the situation is that the Union Pacific and Southern Pacific control the Occidental & Oriental Steamship lines?

A. Yes, sir.

Q. The Southern Pacific controls the Pacific Mail Steamship Line?

A. Yes, sir.

Q. All these steamship lines concerning which you were questioned, including the Portland & Asiatic, run between Pacific ports, Portland and San Francisco, and points in the Orient, do they not?

A. They do.

Q. And they are in the transportation of freight and traffic to and from those ports?

A. Yes, sir.

Q. In connection with the various Pacific Railroad lines?

A. Yes.

Q. Now, I do not think it was made entirely clear this morning. Does the Southern Pacific Company own all of the stock, except perhaps a share each for directors, in the Morgan Steamship Line?

Mr. LOVETT. I think the Southern Pacific owns practically all. There may be a few shares——

Q. Judge Lovett says he thinks the Southern Pacific owns practically all of the stock of the Morgan Line, but there may be a few shares outstanding.

Comr. LANE. The Morgan Line runs from New York to New
353 Orleans.

Mr. LOVETT. No, the Morgan Company is a Louisiana company which formerly owned the steamship line between New Orleans and New York, and owns a railroad extending from New Orleans to Lafayette, Louisiana, a part of the main Trans-Continental Line. It does not now own any steamships plying between New York and New Orleans. They are owned by the Southern Pacific Company. The Morgan Line owns only railroads and a few small river boats, perhaps. The facts are that as these old ships which the Morgan Company owned at the time the Southern Pacific bought its stock many years ago, passed out of service and were replaced by new ships, the new ships were owned by the Southern Pacific Company and all of the old boats, I believe, are out of service, and it is still known as the Morgan Line of steamers, but they are owned by the Southern Pacific Company.

Comr. LANE. Are those the only boats on the Atlantic that are owned by the Southern Pacific? Are there any boats that run down to Panama?

Mr. LOVETT. No, there are some boats plying between New Orleans and Havana. I don't recollect whether they are owned by the Southern Pacific or the Morgan Company. I rather think they were owned by the Morgan Company, but I am not sure whether they were taken over or not.

Mr. KELLOGG. Then, as I understand it, Judge Lovett, if you will make the admission, for many years, at least since 1897, the Southern

Pacific has, either through the Morgan Company or directly,
354 owned and operated a line of steamships extending from New Orleans to New York in connection with the Southern Pacific?

Mr. LOVETT. In connection with the lines of which the stock was owned by the Southern Pacific.

Mr. KELLOGG. Yes, I mean in connection with the Southern Pacific system.

Mr. LOVETT. Yes. While that subject has been mentioned, it has been suggested that probably it would be a good time to correct the impression that Mr. Millar perhaps inadvertently made this morning about the operation of those lines. The Southern Pacific Company does not, as I understood Mr. Millar to state, itself operate any lines in Louisiana or Texas, or east of El Paso. The lines west of El Paso are operated by the Southern Pacific under a lease. The lines in Louisiana and Texas known as Southern Pacific lines, are not operated by that company, but practically all of the stock of the corporations owning the railroads is owned by the Southern Pacific Company, but the business is conducted by those corporations in their own names, the Southern Pacific, of course, owning the stock.

Q. Now, Mr. Millar, turn to the record of the Oregon Short Line executive committee meetings, page 250. Do you find there the record of the resolution of August 11, 1902, approving the preliminary contract between William A. Clark, trustee, and Edward H. Harriman, trustee, of July 9, 1902, in relation to the San Pedro road?

A. Yes. The record is as follows: "Meeting of the Executive Committee of the Oregon Short Line Railroad Company, Au-
355 gust 11, 1902. The following preamble and resolution were adopted. There was submitted a contract between William A. Clark, in trust for himself and his associates, and Edward H. Harriman, as trustees, as in said instrument recited, dated 9th day of July, 1902, the execution whereof by the terms of said contract was subject to the ratification and approval of the executive committee of this company. After consideration and upon motion duly made and seconded, it was resolved, that the execution of the contract now submitted to the committee, between William A. Clark, as trustee for himself and his associates, and Edward H. Harriman, as trustee as in said instrument recited, dated July 9, 1902, be and the same is hereby ratified and approved."

By Mr. SEVERANCE:

Q. What book is that you have there?

A. This is the executive committee volume, Oregon Short Line.

Q. Well, turn to pages 396 and 397. Will you please read in evidence the resolution authorizing the subscription to the Southern Pacific stock, at the meeting held August 18, 1904.

A paper was marked Complainant's Exhibit 43 (Millar).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 43 is a true copy of the resolution which was read into the record by Mr.

Millar in response to the last question (Mr. Evarts consents to the admission), and I offer Complainant's Exhibit 43 in evidence, the same having been Millar's Exhibit 54 in I. C. C. record.

Complainant's Exhibit 43 is as follows:

356 COMPLAINANT'S EXHIBIT 43. (Millar.)

OREGON SHORT LINE R. R. CO.

(Certified Copy)

(S. P. Pref.) (EXECUTIVE COM. *Aug. 18, 1904*)

Subscription to Southern Pacific Preferred Stock.

Upon motion, duly seconded, the following resolutions were unanimously adopted:

Resolved, (1), that Mr. E. H. Harriman be and he is hereby requested to subscribe in his name, but for account and on behalf of this Company, for the preferred stock of the Southern Pacific Company to which he is entitled to subscribe by reason of the stock of the Southern Pacific Company registered in his name, but which he holds for this Company; and that Messrs. T. Jefferson Coolidge, Jr., Geo. J. Gould, James H. Hyde, Otto H. Kahn, Winslow S. Pierce, Jacob H. Schiff, James Stillman, J. P. Adams, C. D. Haines, J. J. Hanauer, Siegfried Haymann, Kuhn, Loeb & Co., Rich E. Pestel, S. Siegman, and E. S. Steinam be and they are hereby requested to transfer and assign to W. D. Cornish the warrants issued to them respectively on account of the stock of the Southern Pacific Company registered in their name, but held by them for and on account of this Company; and that upon such transfer being made said W. D. Cornish be and he is hereby requested to subscribe in his name, but for account and on behalf of this Company, for the Preferred Stock of the Southern Pacific Company, to which, as the holder of such warrants, he will be entitled to subscribe.

Resolved (2), that, upon such subscriptions being made, the Treasurer of this Company be and he is hereby authorized and directed to pay the first instalment thereon, and to pay the remaining instalments as they shall severally mature.

On motion adjourned.

357 Paper marked Complainant's Exhibit 44.

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 44 is a correct copy of the resolution of the executive committee of the Oregon Short Line Railroad Company, passed at a meeting of that committee held on March 9, 1905.

Mr. Evarts assents to the admission.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibit 44, the same having been Millar's Exhibit 55 in I. C. C. record.

Complainant's Exhibit 44 is as follows:

COMPLAINANT'S EXHIBIT 44. (Millar.)

OREGON SHORT LINE R. R. CO.

(Certified Copy.)

(EXECUTIVE COM. *Mar. 9, 1905.*)

(O. R. R. & N. Com. & Pref.)

Purchase of Oregon R. R. & Nav. Co. Stock.

On motion, duly seconded, it was unanimously

Resolved, that this Company purchase from Union Pacific Railroad Company 239,793 shares of the common stock of the Oregon Railroad and Navigation Company, at a price not exceeding $125.00 per share, and 108,623 shares of the preferred stock of the Oregon Railroad and Navigation Company, at a price not to exceed $125.00 per share; and the President of this Company be and he hereby is authorized in his discretion to pay for the said stock in the Four Per Cent Refunding Twenty-five Year Gold Bonds of this Company, at par and accrued interest, or to execute a Note of this Company to said Union Pacific Railroad Company for the amount necessary to pay for said stock.

358 By Mr. KELLOGG:

Q. That stock previous to that time, then, had belonged to the Union Pacific Company, had it?

A. Yes, sir.

Q. And that purchase was carried out, was it?

A. That is my impression. I could not say positively.

Q. You don't know?

A. I have no reason to doubt it.

Q. Will you turn to the Union Pacific Stockholders and Directors' record, Vol. 2, page 163?

A pamphlet was marked Complainant's Exhibit 45 (Millar), which was Millar's Exhibit 56 in I. C. C. record.

Mr. SEVERANCE. It is admitted, is it not, that Complainant's Exhibit 45 (Millar) is Pension Rules covering the Pension System of Union Pacific Railroad Company, taking effect January 1, 1903?

Mr. EVARTS. Yes. You do not need these admissions anyway, do you?

Mr. SEVERANCE. I don't know. These are copies that you gentlemen furnished.

Mr. SEVERANCE. I offer these rules in evidence, Complainant's Exhibit 45 (Millar).

Complainant's Exhibit 45 (Millar) is as follows:

859 COMPLAINANT'S EXHIBIT 45. (Millar)

Pension system of Union Pacific Railroad Co.

Taking effect January 1st, 1903.

Board of pensions 1903.

ERASTUS YOUNG, *Chairman,*
General Auditor.
W. R. KELLY,
General Solicitor.
J. B. BERRY,
Chief Engineer.
E. BUCKINGHAM,
Superintendent of Transportation.
W. R. MCKEEN, Jr.,
Superintendent of Motive Power and Machinery.
A. F. JONAS, M. D.,
Chief Surgeon.

UNION PACIFIC RAILROAD

Pension System.

GENERAL NOTICE.

Pursuant to the action taken by the Board of Directors of the Union Pacific Railroad Company at and subsequent to their meeting held in New York, October 30th, 1902, in respect to a system of pensions, for the purpose of enabling employes of the Company who have rendered it long and faithful service to retire when they
360 have attained an age necessitating relief from duty, the following rules and regulations governing the organization of a Pension Department are hereby established:

RULES AND REGULATIONS OF PENSION DEPARTMENT.

Administration of Pension Department.

1. The administration of the Pension Department shall be by a board of officers, to be known as the Board of Pensions, whose office shall be in Omaha.

Such Board shall, until otherwise ordered, consist of the following officers of the Company:

Board of Pensions.

General Auditor,
General Solicitor,
Chief Engineer,
Superintendent of Transportation,
Supt. Motive Power and Machinery,
Chief Surgeon.

Powers of Board of Pensions.

2. The Board of Pensions shall, subject to the approval of the President, have power—To make and enforce rules and regulations for the efficient operation of the Pension Department.

To determine the eligibility of employes to receive pension allowances; to fix the amount of such allowances; and to prescribe the conditions under which such allowances may inure.

They shall make rules for their own government not inconsistent with these regulations; elect a chairman from their own number; appoint a Secretary; and from time to time, as required, make reports of their action to the President.

361 The actions of the Board of Pensions, when approved by the President, shall be final and conclusive.

Only persons whose entire time has been given to Company's service are eligible.

3. The benefits of the Pension System will apply only to those persons who have been required to give their entire time to Union Pacific Railroad Company or to that company and some other railroad company or companies jointly. In case of such joint employment the Board of Pensions shall decide the amount of the employe's monthly pay that shall be used in determining the pension allowance.

Employees who shall or may be retired and pensioned.

4. (a) All officers and employes who have attained the age of seventy years shall be retired.

Such of them as have been twenty years in the service shall be pensioned.

(b) Locomotive Engineers and Firemen, Conductors, Flagmen and Brakemen, Train Baggagemen, Yard Masters, Switchmen, Bridge Foremen, Section Foremen and Supervisors, who have attained the age of sixty-five years, may be retired.

Such of them as have been twenty years in the service shall be pensioned when retired.

(c) Officers and employes between sixty-one and seventy years of age, who have been twenty years in the service and who have become incapacitated, may be retired and pensioned.

In case an employe between sixty-one and seventy years of
362 age claims that he is, or should his employing officer consider him incapacitated for further service, he may make application or be recommended for retirement, and the Board of Pensions shall determine whether or not he shall be retired from the service.

Physical examination shall be made of employes recommended for retirement who are under seventy years of age, and a report thereof with the recommendation of the Chief Surgeon shall be transmitted

to the Board of Pensions for consideration in determining such cases.

Retirement of employes, when effective.

5. Retirement shall be made effective from the first day of the calendar month following that in which the person shall have attained the specified age, or from the first day of a calendar month to be determined by the Board of Pensions.

Definition of the terms "Service" and "In the Service."

6. The terms "Service" and "In the Service" will refer to employment upon or in connection with any of the railroads forming the Union Pacific System at present, comprising Union Pacific Railroad Company, Oregon Short Line Railroad Company and The Oregon Railroad & Navigation Company; and the service of any employe with this Company shall be considered as continuous from the date from which he has been continuously employed upon such railroads, whether prior or subsequent to their acquisition by Union Pacific Railroad Company, Oregon Short Line Railroad Company, or The Oregon Railroad & Navigation Company.

Computing of term of service.

7. In computing service, it shall be reckoned from
363 the date since which the person has been continuously in the service, to the date when retired, eliminating in the final result any fractional part of a month.

Leave of absence, suspension, dismissal followed by reinstatement within one year, or temporary lay-off on account of reduction of force, is not to be considered as a break in the continuity of service.

Persons who leave the service thereby relinquish all claims to the benefits of pension allowances.

Basis of Pension allowance.

8. The pension allowances authorized are upon the following basis:

For each year of service, an allowance of one per cent of the average regular monthly pay received for the ten years preceding retirement. Thus, if an employe has been in the service for forty years, and his average salary or wages for the last ten years was $75.00 per month, his pension allowance would be forty per cent of $75.00, or $30.00 per month.

Pension fund.

9. The sum of one hundred thousand dollars (100,000) is hereby set apart as a pension fund; in addition to which the company will in each year make a further appropriation, if necessary, of an amount not to exceed fifty thousand dollars ($50,000) in payment of pension allowances for such year.

Whenever it shall be found that the basis of pension allowances shall create demands in excess of the one hundred thousand dollars ($100,000) and an annual appropriation of fifty thousand dollars ($50,000), and as often as such condition may arise, in the
364 absence of any action by the Board of Directors increasing the yearly amount usuable for pensions, a new basis ratably reducing the pension allowances may be established to bring the expenditures within the limit of the fund, and the decision of the

Board of Directors in establishing such new basis shall be absolutely conclusive.

Notice of any such change of rate shall be given before the beginning of the fiscal year in which the change shall become effective.

Allowances to be paid monthly.

10. When pension allowances shall be authorized, pursuant to these regulations, they shall be paid monthly during the life of the beneficiary: *Provided, however*, that the Company may withhold its allowance in all cases of gross misconduct.

Preparation of pension pay-roll.

11. In payment of pension allowances, a pay-roll, showing the names of those to whom allowances have been made, and the amount of such allowances, shall be prepared at the close of each month by the Secretary of the Board of Pensions, certified to by him and approved by the Chairman of the Board, then forwarded to the Auditor, who will, after varification and registry, send it through the usual channels for payment.

Reports on employes attaining required age.

12. It shall be the duty of every employing officer to report at once, to the Secretary of the Board of Pensions, all employes who in January, February, and March, 1903, shall have attained the age of seventy years, and of those employes specified in rule 4, Section (b), who shall have attained the age of sixty-five years; and thereafter, at least three months in advance of the date of retirement, all employes about to attain the requisite age for consideration for pension allowance.

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Information as to whereabouts of pensioned employes.

13. The Secretary of the Board of Pensions must keep himself advised of the whereabouts of pensioned employes, and shall require satisfactory evidence from each of such employes, at least once a year and oftener if necessary, showing that he is entitled to the pension allowance. It shall also be the duty of any official who may notice or receive any advice of gross misconduct on the part of any pensioned employe to promptly notify the Secretary of the Board of Pensions in relation thereto, who will report the circumstances to the Board of Pensions.

Pensions not assignable.

14. In order to preserve direct personal relations between the Company and its retired employes, and that they may continue to enjoy the benefit of the pension system, no assignment of pensions will be permitted or recognized.

Employes retired from service of the company may engage in other business.

15. The acceptance of a pension allowance does not debar a retired employe from engaging in any other business which is not prejudicial to the interests of this Company, but he can not re-enter the service of the Company.

Age limit to new employes.

16. No person inexperienced in railway work over thirty-five years of age, and no experienced person

366 over forty-five years of age, shall hereafter be taken into the service: *Provided, however*, that in the discretion of the president, persons may temporarily be taken into the service irrespective of age for a period not exceeding six months, and that this period may be extended, if necessary, to complete the work for which said persons were originally employed; *Provided, also*, that, with the approval of the Board of Directors, persons may be employed indefinitely, irrespective of the age limit, where the service to be rendered requires professional or other special qualifications.

No right to continued employment or pension allowances is conferred.

17. Neither the action of the Board of Directors in establishing a system of pensions, nor any other action now or hereafter taken by them or by the Board of Pensions in the inauguration and operation of a Pension Department, shall be construed as giving to an officer, agent or employe of the Company a right to be retained in its service, or any right or claim to any pension allowance; and the company expressly reserves its right and privilege to discharge at any time any officer, agent or employe when the interests of the company, in its judgment, may so require, without liability for any claim for pension or other allowance than salary or wages due and unpaid.

Date effective.

18. These rules and regulations shall take effect January 1, 1903.

By order of the Board of Directors.

HORACE G. BURT, *President.*

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PENSION PLAN.

HOW TO SECURE A PENSION.

The applicant for a pension will secure the proper form of application from the Secretary of the Board of Pensions at Omaha, and, when filled out, will obtain the signature to it of his employing officer. The application should be sent to the Secretary of the Board of Pensions, Union Pacific Railroad Company, Omaha, Neb., and the action taken thereon by the Board will be communicated to the applicant through his employing officer.

PENSIONS—HOW COMPUTED.

The amount of pension will depend upon two conditions; viz.: the number of years the person has served the Company, and the amount of his average regular monthly pay for the ten years next preceding retirement. Therefore, to find the amount of the monthly allowance first ascertain the average regular monthly pay for the ten years next preceding the date of proposed retirement, then find the number of years employed by the Company, and from the final result eliminate any fractional part of a month; thus 21 years and 6 months, or 21.5 years. The number of years of service determines the percentage to be applied to the average monthly pay. Thus, if it is

found that the average monthly pay for the ten years next preceding the time of retirement was $80.00, and the years of service 21.5, the monthly pension would be 21.5 per cent of $80.00, or $17.20.

368 The following is form that will be used by applicants for pensions:

APPLICATION FOR PENSION

Personal record of service

I, personally, make this record of my services with Union Pacific Railroad Company, and tender it as the basis for being placed on the pension rolls of that Company:

Name in full_____
Date of birth_____
Age when I began to work for the Company_____
Date of first entry into service of the Company_____
My first work for the Company was as_____
Place where first service was done_____
Present occupation_____
Present place of occupation_____
Position held by me_____
My pay per month on_____ was_____
My present pay per month is_____
Salary received yearly during each of the last ten years_____
If more than one position has been held, or the amount of salary received has varied during this time, show these facts in detail_____
If you left the service of this Company, give time *not* in the service of the Company from the date of original employment, showing length of different periods, if there were more than one_____

369 Remarks: (In this space give any information as to your service with the company that you think should be known by the Board of Pensions in its investigation of your case)_____
I hereby certify to the correctness of this record.

_____
(Signature of Applicant)

The above statement to the best of my knowledge and belief is correct. I recommend that pension be allowed.

_____
(Signature of Employing Officer)

Employes sixty-one to sixty-nine years of age applying for pensions on account of disability will be required to furnish a Certificate from their Family Physician, if they have one, such Certificate to be approved by the nearest Union Pacific R. R. Surgeon.

If they have not had a Family Physician within a year, the Certificate of the Company's Surgeon will be sufficient.

The following is form to be used in either case:

PENSION DEPARTMENT

UNION PACIFIC RAILROAD COMPANY.

Permanent disability.

CERTIFICATE OF FAMILY PHYSICIAN.

I have examined the person whose address is below, and hereby certify as follows:

Name of person examined_____
370 His Post Office address_____
His occupation_____
I have known him_____years_____
I have been his Family Physician for_____years

I consider him to be permanently disqualified for the duties of his position with the Railroad Company, for the following reasons: _____
Condition of Heart _____
Lungs _____
Liver _____
Stomach _____
Bowels _____
Kidneys _____
Spine _____
Sight _____
Hearing _____
Any facts that may be useful to the Board of Pensions in determining this case _____
Dated _____ Signed _____
Address _____

I am acquainted with Dr. _____, who signs the above certificate, and believe him competent to give a correct opinion in this case.
Date _____ Signed _____,
Surgeon U. P. R. R. Co.

(This blank is to be used where the applicant has a Family Physician who has known him at least one year: and is to be signed by the Company's nearest Surgeon.)

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PENSION DEPARTMENT

UNION PACIFIC RAILROAD COMPANY.

Permanent disability.

REPORT OF COMPANY'S SURGEON.

I have this day examined _____ who is employed by Union Pacific Railroad Co. at _____ as _____ and believe him to be permanently disabled for performing the duties of his position with the Company, for the following reasons:

Condition of Heart _____
Lungs _____
Liver _____
Stomach _____
Bowels _____
Kidneys _____
Spine _____
Sight _____
Hearing _____
Any facts that may be useful to the Board of Pensions in determining this case _____
Dated _____ Signed _____
_____
(Surgeon U. P. R. R. Co.

NOTE: This report is strictly confidential between the Surgeon and the Board of Pensions, and it is hoped that the Surgeon will give the Board
372 all the information in the case that he can, so that no injustice shall be done to the Applicant or to the Company.

NOTE: This blank is to be used where the Applicant has not had a Family Physician for the last year. The Certificate of the Company's Surgeon being sufficient.

PERSONAL RECORD CARDS.

The Board of Pensions has determined that a personal record shall be made and kept of every person employed by the Company who has attained the age of forty years or over, so that the Board may at all times have in its possession all information required in determining the pension status, present and future, of any person who at any

time may come within the limits of the pension system. For this purpose a record-card has been prepared and will be supplied on regular requisition by the Stationery Department.

Should the spaces on the face of the card not give sufficient room, the lines on the back may be used.

Two records are to be made for each person permanently in the employ of the Company who has reached the age of forty years or over; they will be sent to the head of the department by whom he is employed, who will file one in his office, and sign and forward the other to the Secretary of the Board of Pensions.

The record-cards should be revised by the heads of depart-
373 ments during the month of January of each year and new card made covering any changes that have occurred during the past year, which should include any changes in title or occupation of employes.

New record-card should also be made for those employees who have during the year attained the age of forty years.

The record-card does not do away with the record of service required on application for pension.

(Face of record-card.)

When reach 70.

Name _____

Division or Department _____ (Do not fill above space)

Born, month _____ day _____ year _____

Began work for Company, month _____ day _____ year _____

First occupation with Company _____

Where first employed by Company _____

Occupation with Company between first and present, if any _____

Where now employed by Company _____

Present occupation with Company _____

This man's name now appears on _____ pay roll.

This is a true copy of this employe's personal record _____

Date of making _____

this record _____ Div. or Dept.

374 (Back of record-card)

If he left the service of the Company at any time between the time when he first began and now, state the fact and give length of time absent, and any other particulars:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

A paper was marked Complainant's Exhibit 46, being Millar Exhibit 57 in I. C. C. record.

Mr. SEVERANCE: It is admitted that Complainant's Exhibit 46 is a true copy of the resolution of the directors of the Union Pacific

Railroad Company, appearing at page 163, Vol. 2, of the Record of Stockholders and Directors, Amendment to Pension Rules, passed April 10, 1906, and I offer the same in evidence.

375 COMPLAINANT'S EXHIBIT 46 (Millar)

UNION PACIFIC RAILROAD CO.

(Certified copy)

(DIRECTORS, *April 10, 1906.*)

Amendment to Pension Rules.

Upon motion, duly made and seconded, it was unanimously

Resolved, that Rule 6 of the Rules and Regulations of the Pension Department, established by this Company, and promulgated by the President to take effect January 1, 1903, be amended so that said Rule shall hereafter read as follows:

"6. The term "Service" and "In the Service" refers to employment upon or in connection with any of the railroads owned or operated by the Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, Southern Pacific Company, Central Pacific Railway Company, Southern Pacific Railroad Company, Oregon & California Railroad Company, The Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, Houston & Texas Central Railroad Company, The Houston East & West Texas Railway Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company respectively, as well as upon or in connection with any line of railway now owned or operated by this company; and the service of any employee of either of said companies shall be considered as continuous from the date from which he has been continuously employed by said companies or either of them or by this company."

376 By Mr. SEVERANCE:

Q. Will you turn to page 206 of the record book of the meetings of the executive committee of the Union Pacific Railroad Company meeting of July 26, 1906?

A. Yes, sir.

Q. Do you see a resolution there empowering Mr. Harriman to borrow money at his discretion for the use of the company?

A. Yes, sir.

Q. Will you read that into the record?

A. (Reading.) "Meeting of the executive committee of the Union Pacific Railroad Company, July 26, 1906. On motion duly made and seconded it was unanimously resolved that the resolution adopted by this committee on the 31st day of December, 1902, authorizing

E. H. Harriman, chairman, of this committee, to borrow such sums of money as may be required for the uses of this company, be and the same is hereby amended to read as follows:

"*Resolved*, that E. H. Harriman, chairman of the executive committee, be and is hereby authorized to borrow such sums of money as may be required for the uses of this company; to execute in the name and on behalf of this company a note or notes for the amounts so borrowed; and to pledge the securities of this company as collateral to such notes. In the absence of the chairman of the executive committee, authority is hereby given to the treasurer of the company and to W. D. Cornish, one of the vice-presidents of the company, or to the treasurer and comptroller of the company, to sign jointly, on behalf of this company, notes for the amounts so borrowed, and to pledge such securities as collateral thereto.

377 Comr. KNAPP. Do we understand that that gave Mr. Harriman unlimited authority to borrow any sum of money he chose and pledge all the assets of the companies as security for the payment?

WITNESS. No, sir. The object of this resolution was to comply with the rules of certain banking institutions in the city which required not only the making and execution of a note, but the pledging of collateral with the note; that was the simple object of passing this resolution.

Comr. LANE. Does your record show just what use Mr. Harriman made of the opportunity that was given him there?

WITNESS. No, sir; no. This simply gave him the power when a note was called for, that he could pledge the securities as well as execute the note. This did not refer to any special borrowing of money.

Comr. LANE. At what time was that passed?

WITNESS. That was July 26, 1906.

Comr. LANE. What money was borrowed under that resolution?

WITNESS. I have no knowledge as to that whatever.

Mr. SEVERANCE. I might say that this was an amendatory resolution. A resolution was passed on December 31, 1902, giving this power to Mr. Harriman, and then on the 26th of July it was amended by re-enacting that part of the resolution and inserting also the provision that Mr. Cornish, one of the vice-presidents, and the treasurer, might sign notes and pledge securities in the absence of Mr. Harriman.

Comr. LANE. As I understood Mr. Mahl, he said no money had been borrowed.

WITNESS. If I may explain, I know personally that this
378 vote was not taken for the purpose of borrowing money, but for the purpose of enabling the chairman to pledge securities at the same time he executed notes.

Mr. LOVETT. If the Commission please, as I understand, this resolution was merely a formal matter passed away back in 1902, and

tive committee attends to them without any extra report. That is correct, Mr. Lovett, isn't it?

Mr. LOVETT. Yes, sir.

Q. Turn to page 20 of Vol. 3 of the executive committee. Do you find any statement there with reference to the appointment of Mr. Lovett as counsel?

A. At a meeting of the Executive Committee of the Union Pacific Railway Company, held February 18, 1904, the chairman re-
382 ported that he had appointed Hon. R. S. Lovett counsel of the Union Pacific and Southern Pacific companies, and the allied lines, with headquarters at 120 Broadway, New York City. Whereupon on motion, duly seconded, it was resolved that the action of the chairman in appointing the Hon. R. S. Lovett, as stated above, be and the same is hereby ratified and approved.

Q. Turn to page 39 of that same volume, June 9, 1904. Do you find a memorandum with reference to a lease of offices for the Director of Maintenance and Operation?

A. Yes, sir.

Q. Will you read that entry?

A. Meeting of the executive committee of the Union Pacific Railroad Company, held June 9th, 1904. The Chairman submitted a lease for floor space in the Merchants' Loan and Trust Bldg., Chicago, for the offices of Kruttschnitt, director of Maintenance and Operation, for use jointly by the Union Pacific, Southern Pacific, Oregon Short Line, and Oregon Railroad and Navigation Company, for a term of three years, at an annual rental of $11,400, payable monthly in advance. Whereupon on motion, duly seconded, it was resolved that the above lease, now submitted, be and the same is hereby approved and confirmed.

Q. Will you turn to the meeting of April 7, 1905, page 82, of Vol. 3, and read a letter from Mr. Harriman submitted to that meeting, the letter addressed to Mr. Gould?

A. At the meeting of the executive committee of the Union Pacific Railroad Company held April 7th, 1905. "The Chairman submitted for the information of the committee a copy of his letter to Mr. George J. Gould, dated April 26, 1905, as follows:

383 "GEORGE J. GOULD, Esq.,

"*195 Broadway, New York City.*

"Dear Mr. GOULD: I am in receipt of yours of the 25th instant, as follows: 'You doubtless know that I have determined to support the Western Pacific construction. This I regard as necessary for the protection of the system in which my interests are greatest. If you think this involves reasons why we should reciprocally withdraw from the Boards of which we are the respective heads, I would be glad to meet your view. I prefer that you should reach your own conclusion as to whether, remaining as we are, or withdrawing as above suggested, would be better for the interests we represent.'

"It seems to me that you settled the question of your own withdrawal from the Union Pacific and Southern Pacific boards on March

8 last, when, after the Western Union Board meeting, you, Mr. Schiff, and myself had a talk regarding your connection with the Western Pacific. You then stated that you had no interest whatever in the construction of the line and were not committed in any way thereto, but that you did not mean to convey the impression that you might not in the future, but, if you did, you said you did not think it would be right for you to be in the counsels of our allied line, and also you would give us due notice of intention on your part, to promote the construction of the Western Pacific. On March 9, the Union Pacific Executive Committee was elected, and you included therein.

384 I am not conscious of any act on my part which might be considered as detrimental to any of the properties of which I am or have been a director. I have not taken part in any proceeding of the Denver & Rio Grande for a long time, and had presumed that I had not been reelected to that Board. I also declined to qualify as director after my election to the Rio Grande Western, as I did not want to be in any way responsible for the attitude to be assumed by that company toward the Western Pacific. The era of prosperity through which we are now passing has been marked by less construction of destructive, competitive and nonproducing lines of transportation than any former one; but there has been great expenditure in providing for improvements and additional facilities to the already existing lines; thereby better conserving the interests of the public and the shareholders as well. For myself, I shall regret the loss of your advice, which I have valued in our affairs, as well as the personal pleasure of having you included in them. If there has been any misunderstanding of my directorship in the Denver & Rio Grande and the Rio Grande Western, will you please advise the Boards of those companies of my withdrawal from or declination to qualify as one of their body.

"Believe me, yours truly,

"(Signed) E. H. HARRIMAN."

Q. Turn to page 104 of that volume, meeting of July 20, 1905. Do you find a reference there to a letter from Mr. Stubbs about advertising?

A. Yes.

Q. Will you read that entry?

385 A. "At a meeting of the executive committee of the Union Pacific Railroad Company held July 20, 1905, the following action was taken.

"The Chairman submitted a letter from Mr. J. C. Stubbs, traffic director, dated July 6th, 1905, enclosing a memorandum showing estimated advertising expenses for system lines for the fiscal year ending June 30, 1905, of which this company's proportion is $209,227.49, and stated that he had authorized the same. Whereupon on motion duly seconded, the expenditure was approved, and the action of the chairman in authorizing the same was ratified and confirmed."

Paper marked Complainant's Exhibit 47 (Millar).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 47 is a copy of the letter from Mr. Stubbs, mentioned in the resolution just read by the witness. This exhibit was Millar exhibit 57 in I. C. C. record. I offer Complainant's Exhibit 47 (Millar) in evidence.

Complainant's Exhibit 47 is as follows:

COMPLAINANT'S EXHIBIT 47. (Millar.)

(Advertising.)

CHICAGO, *July 6, 1905.*

Mr. E. H. HARRIMAN,
President, Union Pacific Railroad Company,
120 Broadway, New York City.

DEAR SIR: Attached to this letter is a table showing the amount required for advertising purposes for the Related
386 Lines, for the fiscal year ending June 30th, 1906. The table shows what the appropriation was for 1905, and an increase for 1906 over 1905. This table, however, should be read in the light of the following explanation:

While the appropriation for 1905 was $516,296.05, there was spent but $422,044.71, or $94,251.34 less than the appropriation. Of this $94,251.34, the sum of $16,500.00 was appropriated for the wall map which has not yet been completed nor paid for. The cost of the wall map is included in the appropriation asked for, for 1906. The balance of $94,251.34 surplus, has been contracted to be paid, but the work has not yet been done. It is also included in the estimate for 1906, so that the net sum requested for 1906—as compared with the amount requested for 1905—is but $497,360.91, the remainder, $94,251.34, having been appropriated during 1905.

Yours truly,

(Signed) J. C. STUBBS.

U. P. requisition also includes $12,500, necessary to advertise opening of San Pedro line—with expectation that the San Pedro Co. will appropriate a like sum.

387 *Advertising appropriations system lines, fiscal years ending June 30th, 1906–1905.*

	1906.	1905.	Increase.
Union Pacific Railroad Co	$209,227.49	$152,757.49	$56,470.00
Oregon Short Line Railroad Co	29,105.05	26,706.05	2,400.00
Oregon Railroad and Navigation Co	44,306.68	42,394.68	1,912.00
Pacific System—Southern Pacific Co	168,722.16	163,667.96	5,054.20
Atlantic System—Southern Pacific Co	140,249.87	130,769.87	9,480.00
Grand total	591,612.25	516,296.05	75,316.20
Net increase 1906 over 1905			$75,316.20

An adjournment was here taken until the morning of Tuesday, December 2, 1908, at 10.30 o'clock.

388 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, December 2, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the complainant, Mr. C. A. Severance; on behalf of the defendants, Mr. Maxwell Evarts.

ALEXANDER MILLAR, recalled.

testified:

Papers marked Complainant's Exhibits 48 to 54 (Millar), inclusive, the same having been Exhibits 59 to 65 in Interstate Commerce Commission record, Exhibit 58 (I. C. C.) being omitted from this record as the same was merely a letter transmitting the other exhibits.

Mr. SEVERANCE. It is admitted that Complainant's Exhibits 48 to 54 (Millar) are correct copies of request for proxies under the stock trust agreement between William A. Clark, individually and as trustee, and E. H. Harriman, as trustee, which has been heretofore introduced as Complainant's Exhibit 31, the same being Millar Exhibit 40 I. C. C. record.

I offer in evidence Complainant's Exhibits 48 to 54 (Millar), inclusive.

Complainant's Exhibits 48 to 54 (Millar) are as follows:

COMPLAINANT'S EXHIBIT 48. (Millar.)

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD CO.

To the Farmers Loan and Trust Company, trustee:

Under agreement dated June 7, 1903, between William A.
389 Clark, individually and as trustee and E. H. Harriman as trustee, and the Farmers Loan and Trust Company, Trustee, known as "Stock Trust Agreement."

In pursuance of the agreement between William A. Clark, individually and as trustee, and E. H. Harriman, as trustee, and the Farmers Loan & Trust Company, known as the Stock Trust Agreement, dated June 7, 1903, and referring to Section 3 of Article V of said agreement, the undersigned, parties of the first part to said agreement, hereby jointly and in writing authorize and request you to issue proxy to P. L. Williams, of the City of Salt Lake, State of Utah, and W. S. McCornick, of the City of Salt Lake, State of Utah, or either of them to vote the stock of the San Pedro, Los Angeles & Salt Lake Railroad Company held by you as trustee under said agreement, at the annual meeting of the stockholders of said San Pedro Company to be held November 20, 1905, or any adjournment thereof, for the following named persons as directors of said San Pedro Company: W. H. Bancroft, H. I. Bettis, W. D. Cornish, E. H. Harriman, W. G. Kerckhoff, J. S. Slausen, J. Ross Clark, W. A. Clark, W. H. Comstock, Thomas Kearns, R. C. Kerens, T. F. Miller,

and also to vote the said stock upon any other question or business proper to come before said meeting.

Respectfully,

W. A. CLARK,
Individually and as Trustee.
E. H. HARRIMAN,
As Trustee.

Dated November 6, 1905.

390 COMPLAINANT'S EXHIBIT 49. (Millar.)

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

To the Farmers Loan & Trust Company, trustee:

Under agreement dated June 7, 1903, between William A. Clark, individually and as trustee and E. H. Harriman as trustee, and the Farmers' Loan & Trust Company, Trustee, known as "Stock Trust Agreement."

In pursuance of the agreement between William A. Clark, individually and as trustee, and E. H. Harriman, as trustee, and the Farmers' Loan & Trust Company, known as the Stock Trust Agreement, dated June 7, 1903, and referring to Section 3 of Article V of said agreement, the undersigned, parties of the first part to said agreement, hereby jointly and in writing authorize and request you to issue proxy to P. L. Williams of Salt Lake City, Utah, and W. S. McCornick, to vote the stock of the San Pedro, Los Angeles & Salt Lake Railroad Company held by you as trustee under said agreement, at the annual meeting of the stockholders of said San Pedro Company to be held November 19, 1906, or any adjournment thereof, for the following named persons as directors of said San Pedro Company: W. H. Bancroft, H. I. Bettis, W. D. Cornish, E. H. Harriman, W. G. Kerckhoff, W. R. Kelly, W. A. Clark, J. Ross Clark, R. C. Kerens, Thomas Kearns, T. F. Miller, W. H. Comstock, and also to vote the said stock upon any other question or business proper to come before said meeting.

Respectfully,

W. A. CLARK,
Individually and as Trustee.
E. H. HARRIMAN,
As Trustee.

Dated Oct. 3, 1906.

391 COMPLAINANT'S EXHIBIT 50. (Millar.)

EMPIRE CONSTRUCTION COMPANY.

To The Farmers Loan & Trust Company, trustee under Agreement dated June 7, 1903, between William A. Clark, individually and as trustee and E. H. Harriman as trustee, and the Farmers Loan & Trust Company, Trustee, known as "Stock Trust Agreement":

In pursuance of the agreement between William A. Clark, individually and as trustee, and E. H. Harriman as trustee, and the Farm-

ers Loan & Trust Company, Trustee, known as the Stock Trust Agreement, dated June 7, 1903, and referring to Section 3 of Article V of said agreement, the undersigned, parties of the first part to said agreement, hereby jointly and in writing authorize you to issue proxy to P. L. Williams, of the City of Salt Lake, State of Utah, and W. S. McCornick, of Salt Lake City, Utah, or either of them, to vote the stock of the Empire Construction Company held by you as trustee under said agreement, at the annual meeting of the stockholders of said Empire Construction Company to be held on November 20, 1905, or any adjournment thereof, for the following named persons as directors of said Empire Construction Company: W. A. Clark, H. I. Bettis, J. Ross Clark, W. F. Herrin, T. E. Gibbon, R. C. Kerens, T. F. Miller, Charles Seyler, J. S. Slausen, and also to vote the said stock upon any other question of business proper to come before said meeting.

Respectfully.

W. A. CLARK,
Individually and as Trustee.
E. H. HARRIMAN,
As Trustee.

Dated November 6, 1905.

392 COMPLAINANT'S EXHIBIT 51. (Millar.)

EMPIRE CONSTRUCTION COMPANY.

To the Farmers Loan & Trust Company, Trustee under agreement dated June 7, 1903, between William A. Clark, individually and as trustee and E. H. Harriman as trustee, and the Farmers Loan & Trust Company, Trustee, known as "Stock Trust Agreement."

In pursuance of the agreement between William A. Clark, individually and as trustee, and E. H. Harriman as trustee, and the Farmers Loan & Trust Company, Trustee, known as the Stock Trust Agreement, dated June 7, 1903, and referring to Section 3 of Article V of said agreement, the undersigned, parties of the first part to said agreement hereby jointly and in writing authorize you to issue proxy to P. L. Williams of Salt Lake City, Utah, and W. S. McCornick, to vote the stock of the Empire Construction Company held by you as trustee under said agreement, at the annual meeting of the stockholders of said Empire Construction Company to be held on November 19, 1906, or at any adjournment thereof, for the following named persons as directors of said Empire Construction Company: W. A. Clark, H. I. Bettis, J. Ross Clark, W. F. Herrin, W. R. Kelly, R. C. Kerens, T. F. Miller, Charles Seyler, W. G. Kerckhoff, and also

to vote the said stock upon any other question or business proper to come before said meeting.

Respectfully,

W. A. CLARK,
Individually and as Trustee.
E. H. HARRIMAN,
As Trustee.

Dated Oct. 3, 1906.

393 COMPLAINANT'S EXHIBIT 52. (Millar.)

120 BROADWAY, NEW YORK,
February 2, 1905.

THE FARMERS' LOAN & TRUST COMPANY,
22 William Street, New York City.

GENTLEMEN: In pursuance of the agreement of William A. Clark, individually and as trustee, and Edward H. Harriman, as Trustee, and The Farmers' Loan & Trust Company, entitled "Stock Trust Agreement," dated June 7th, 1903, and referring to Section 3 of Article 5 of said agreement, the undersigned, parties of the first part to said agreement, hereby jointly in writing authorize you to issue proxy to J. Ross Clark or H. I. Bettis, or either of them, Los Angeles, California, to vote at the annual election of the stockholders of The Los Angeles Terminal Land Company, called to be held on March 14, 1905, at Los Angeles, California, or any adjournment thereof, for the following named directors of the said Los Angeles Terminal Land Company: R. C. Kerens, W. H. Comstock, T. E. Gibbon, H. I. Bettis, J. Ross Clark, W. G. Kerckhoff, F. K. Rule.

Respectfully yours,

W. A. CLARK,
Individually and as Trustee.
E. H. HARRIMAN,
As Trustee.

394 COMPLAINANT'S EXHIBIT 53. (Millar.)

120 BROADWAY, NEW YORK,
February 14, 1906.

THE FARMERS' LOAN & TRUST COMPANY,
22 William Street, New York City.

GENTLEMEN: In pursuance of the agreement of William A. Clark, individually and as trustee, and Edward H. Harriman, as Trustee, and The Farmers' Loan & Trust Company, entitled "Stock Trust Agreement," dated June 7th, 1903, and referring to Section 3 of Article 5 of said agreement, the undersigned, parties of the first part to said agreement, hereby jointly in writing authorize you to issue proxy to J. Ross Clark and H. I. Bettis, or either of them, Los Angeles, California, to vote at the annual election of the stockholders of The Los Angeles Terminal Land Company, called to be held

on March 14, 1906, at Los Angeles, California, or any adjournment thereof, for the following named directors of the said Los Angeles Terminal Land Company: H. I. Bettis, J. Ross Clark, W. H. Comstock, T. E. Gibbon, W. G. Kerckhoff, R. C. Kerens, Charles Seyler.

Respectfully yours,

W. A. CLARK,
Individually and as Trustee.
E. H. HARRIMAN,
As Trustee.

395 COMPLAINANT'S EXHIBIT 54. (Millar.)

UNION PACIFIC RAILROAD COMPANY.

EXECUTIVE OFFICES, 120 BROADWAY,
New York, February 2, 1905.

FARMERS' LOAN & TRUST COMPANY,
22 William Street, New York City.

GENTLEMEN: As Trustee under the "Stock Trust Agreement" you hold the stock of the California Improvement Company.

The annual meeting of this company should have been held on January 9, 1905. Owing to the absence of Senator Clark in Europe no arrangement was made as between W. A. Clark and E. H. Harriman for the issuance of proxies or the selection of the names to be voted for as directors of the company at that meeting.

The California Improvement Company is not engaged in business and its affairs are practically wound up. It seems unnecessary, therefore, to go to the trouble and expense of holding a special stockholders meeting, as the present directors and officers hold over until an election is held, and we now advise you that it will not be necessary to call a special meeting of the stockholders or to elect new directors or officers until the date of the next annual meeting, in January, 1906.

Yours truly,

W. A. CLARK,
E. H. HARRIMAN.

396 By Mr. SEVERANCE:

Q. Now, with regard to the Southern Pacific, will you look at the records of the directors of the Southern Pacific, Volume 5. I have not the page, but it is the meeting of June 9, 1904.

A. What is the subject?

Q. It is the appointment of Mr. Stubbs and Mr. Kruttschnitt.

A. Yes, sir.

Q. Will you read that entry or resolution?

A. This was a meeting of the board of directors of the Southern Pacific Company held June 8, 1904. The following resolution was adopted:

"Resolved, that J. C. Stubbs be and he is hereby appointed a vice-president of this company with headquarters at Chicago, Illinois; that J. Kruttschnitt be and he is hereby appointed a vice-

president of this company, with headquarters at Chicago, Illinois; and that C. H. Markham be and he is hereby appointed a vice-president of this company with headquarters in San Francisco, Cal. Each of said vice-presidents shall have such powers and perform such duties as shall from time to time be conferred and prescribed by the board of directors, or executive committee, or the chairman of the executive committee."

By Mr. KELLOGG:

Q. Will you please turn to page 288 of the meeting of March 31, 1903, of the Short Line Company?

A. I think it is the executive committee.

Q. Will you please read that resolution?

397 A. (Reading.) "The Chairman said that pursuant to authority conferred upon him by the executive committee he had sold 300,000 shares of Southern Pacific stock at 57½ payable $6,000,000 in cash and the balance, $11,250,000, on or at the option of the purchaser at any time before April 30, 1904, with interest at the rate of 6 per cent per annum; the deferred payment to be secured by the deposit of satisfactory collateral, the market value of which shall be maintained at $1,000,000 in excess of such deferred payment. Whereupon, on motion duly seconded, the action of the chairman was ratified and confirmed."

Q. Now, there was no previous resolution of the Board, stockholders, or executive committee or the Short Line for the sale of that stock, that you know of, was there?

A. No, sir.

Q. Of course, your answer in relation to that is subject to correction?

A. Yes, sir.

Q. If you find any such resolution?

A. Yes, sir.

Q. Now, that resolution was authorizing the sale of 300,000 shares of Southern Pacific stock owned by the Oregon Short Line, passed March 31, 1903, wasn't it?

A. Yes, sir.

Q. Now, that stock was bought back again on the 12th day of November, 1903, as appears from the stockholders' and directors' records of the Short Line Company, of November 12, 1903. It was bought back from William Rockefeller, wasn't it?

A. Yes, sir.

Q. Will you please turn to that resolution and read it in evidence?

398 A. "A meeting of the board of directors of the Oregon Short Line Railroad Company, November 12, 1903. The Chairman reported that in pursuance of a letter received from Mr. William Rockefeller, dated November 5, 1903, and submitted to the board, he had closed the transaction in respect of the 300,000 shares of the capital stock of the Southern Pacific Company, and that the

officers of the company had paid the principal amount involved, together with interest and commissions; and whereupon, on due consideration and discussion, and on motion duly made and seconded, it was resolved that the action of the chairman in the transactions with Mr. Rockefeller relating to said stock of the Southern Pacific Company, be in all things adopted, ratified and approved."

Q. Have you the letter referred to therein from Mr. Rockefeller?

A. I have.

Q. Will you let me see it?

A. I have a copy in my possession.

Q. Well, a copy.

(A paper was marked Complainant's Exhibit 55 (Millar), which was Exhibit Millar 82 in the Interstate Commerce Commission record.)

Mr. SEVERANCE. It is admitted that this is a correct copy of the letter from William Rockefeller referred to in the resolution just read in evidence, and I offer Complainant's Exhibit 55 in evidence.

Complainant's Exhibit 55 (Millar) is as follows:

399 COMPLAINANT'S EXHIBIT 55. (Millar.)

STANDARD OIL CO.,
26 BROADWAY, NEW YORK,
Nov. 5, 1903.

E. H. HARRIMAN, Esq.,
Chairman, Executive Committee,
Oregon Short Line R. R. Co.

DEAR SIR: Referring to the agreement entered into between you and me on March 30, 1903, in respect to the 300,000 shares of the capital stock of the Southern Pacific Company, I beg to state that I should be glad to have you take over the stock now, instead of waiting until the 1st of May, 1904, as originally contemplated. If you are prepared to do this, I am willing to reduce the commission agreed upon to five-eighths of one per cent. viz. $187,500, and shall be ready to close the matter upon receipt of your check for the principal amount involved, with interest at 6%, together with the amount of said commission.

Yours very truly,

(Signed) WM. ROCKEFELLER.

Q. Were you present at the board of directors when that meeting—or the executive committee meeting when that agreement was made between Mr. Harriman and Mr. Rockefeller, for the sale of that stock?

A. The first resolution to which I have testified?

Q. Yes. Were you present?

A. Yes.

Q. Do you remember any agreement between Mr. Harriman
400 and Mr. Rockefeller as to the sale of that stock? Do you know anything more about it than what appears in the record?

A. I know the transaction was carried out.

Q. That is, you know that this stock was sold to Mr. William Rockefeller in March, 1903, under an agreement that they would take it back within a year?

A. I don't recall the terms of the agreement, but I remember the transaction.

Q. What do you remember about the transaction? Tell us all you remember about it.

A. I remember distinctly delivering the stock and getting the check.

Q. Did you get the stock back?

A. I do not recall whether I took the delivery of the stock; I rather think not—my recollection is I did not.

Q. But it was bought back the following November?

A. Yes, sir.

Q. Will you turn to the meeting of March 26, 1903, Oregon Short Line executive committee? Look at a resolution where the chairman reported that he had purchased two steamships from the Atlantic Transport Company for $2,200,000 each, and read it, please.

A. "Executive Committee of the Oregon Short Line Railroad Company, March 26, 1903. The chairman reported that pursuant to authority conferred upon him at the meeting of the executive committee on February 19, 1903, he had purchased from the Atlantic Transport Company two ocean steamers known in the contract as Nos. 5 and 6, now under construction at the New York Ship-
4.1 building yard at Camden, N. J., at an approximate cost of $2,200,000 each, the delivery of which is expected about the end of the present year. Whereupon, on motion duly seconded, the action of the chairman was ratified and confirmed."

Q. Please look at the executive meeting of the Oregon Short Line, page 290, and read the resolution in evidence.

A. This was a meeting of the executive committee of the Oregon Short Line Railroad Company, held April 6, 1903, at which the following preamble and resolution were on motion duly seconded, unanimously adopted:

Whereas, this company is the owner of certain shares of the capital stock of the Southern Pacific Company, which shares are registered on the books of said Southern Pacific Company in the following names, namely, E. H. Harriman, 456,950 shares; J. P. Adams, 100 shares; C. B. Haines, 400 shares; J. J. Hanauer, 5,000 shares; Siegfried Hayman, 20 shares; Kuhn, Loeb & Co., 111,430 shares; S. Sigman, 9,600 shares; E. S. Steinam, 15,700 shares; Richard E. Pestel, 100 shares; and

Whereas, the persons above mentioned in whose names said stock is registered, have executed and delivered proxies in respect thereof to E. H. Harriman, Alexander P. Humphrey and Maxwell Evarts to vote upon said shares at the annual meeting of the stockholders of the Southern Pacific Company, to be held on April 8, 1903, and at any and all adjournments thereof;

Resolved, that the actions of the persons above mentioned
402 in whose names certain shares of the capital stock of the Southern Pacific Company owned by this company are registered, in executing and delivering proxies in respect of said shares to E. H. Harriman, Alexander P. Humphrey and Maxwell Evarts, for use at the annual meeting of the stockholders of the Southern Pacific Company, to be held on April 8, 1903, and at any and all adjournments thereof, be and the same is hereby in all respects authorized, approved and ratified.

This is April 19, 1903.

Q. Will you turn to the Southern Pacific executive committee, volume 1, page 13?

A. June 20, 1901?

Q. Yes, establishing traffic headquarters at Chicago; Mr. Harriman's letter to Mr. Hays, of the Southern Pacific. Read the whole entry.

A. At a meeting of the executive committee of the Southern Pacific Company held June 30, 1901, the chairman reported that, pursuant to authority given him by the board of directors June 6, 1901, he had arranged to establish traffic headquarters of the company at Chicago in connection with the Union Pacific, Oregon Short Line and Oregon Railroad & Navigation Company, in charge of Mr. J. C. Stubbs, and that he had addressed a letter to President Hays in relation thereto, of which the following is a copy:

NEW YORK, *June 18, 1901.*

Mr. CHARLES M. HAYS, *President,*
San Francisco, Cal.

DEAR SIR: Effective July 1st, next, the supervision of the traffic of the Southern Pacific Company has been committed to Mr. J. C.
Stubbs, who will be responsible directly to the executive
403 committee. Please instruct the several traffic officials to report to Mr. Stubbs. On and after the above date the headquarters of the Traffic Department will be in Chicago, Ill.

Yours truly,

E. H. HARRIMAN,
Chairman Executive Committee.

That is all there is.

Q. Mr. Hays was president of the Southern Pacific Company at that time, wasn't he?

A. Yes, sir.

Q. Turn to page 16. Read the proceedings submitted to the board and the report of the correspondence with President Hays on the subject of reorganization.

A. (Reading.) Meeting of the executive committee of the Southern Pacific Company held July 18, 1901. Mr. Tweed, chairman of the Board of Directors, made a verbal report upon the correspondence which had heretofore passed between himself and President Hays in

relation to the appointment of officers by the president and its bearing upon the whole subject of reorganization, and submitted his letter to the meeting of July 17, in reference to the appointment of Mr. Fitzhugh and a telegram from President Hays dated July 18, all the details of which Mr. Tweed stated fully to the committee. Whereupon, on motion duly seconded, the action of the chairman of the board of directors as reported to the committee was unanimously approved.

Q. Have you the correspondence referred to therein?

A. I do not feel sure about that.

404 Mr. Millar, were you present at that meeting?

A. I was.

Q. What was the verbal discussion and report?

A. I do not recall very distinctly, but I got the impression and have the impression now, that the eastern officers were unable to agree with Mr. Hays as to the organization in San Francisco, and that he had appointed an officer, either without consultation with the eastern office, or a man who was not satisfactory to them; that is my recollection.

Q. The eastern officer was Mr. Harriman?

A. Mr. Tweed and Mr. Harriman.

Q. That was after the purchase of the Southern Pacific stock by the Union Pacific?

A. Yes, sir; the report was made by Mr. Tweed.

Q. Mr. Tweed was at that time chairman of the board?

A. Yes.

Q. But that was after the Union Pacific acquisition, was it not?

A. Yes, sir.

Q. Mr. Harriman was active at that time?

A. He was chairman of the executive committee.

Q. Pages 31 and 32 of the same book, in relation to the appointment of comptroller, general auditor, and assistant comptroller?

A. (Reading.) This was a meeting of the executive committee of the Southern Pacific Company, November 27, 1901. On recommendation of the chairman, the following resolutions were unanimously adopted:

"Resolved, that the duties of Mr. William Mahl, as comptroller of this company, shall be such as may be fixed and determined

405 from time to time by the board of directors, executive committee or chairman thereof.

"Resolved, further, that the office of assistant comptroller of this company, be and is hereby created, and that H. S. Bradt be and he is hereby appointed such assistant comptroller, with such powers and duties as may be fixed and determined by the board of directors, executive committee, chairman thereof, or comptroller, from time to time.

"Resolved, further, that Erastus Young be and he is hereby appointed general auditor of this company, with such powers and duties

as may be fixed and determined by the board of directors, executive committee, or chairman thereof from time to time.

"Resolved, further, that the secretary be and is hereby relieved from the work and authority assigned to the comptroller or general auditor.

"Resolved, further, that the title of G. T. Klink be and is hereby changed from general auditor, Pacific system, to auditor, Pacific system."

Q. Mr. Erastus Young was at that time general auditor of the Union Pacific?

A. Either auditor or general auditor; I forget the distinction in title.

Q. One or the other?

A. Yes, sir.

Q. Meeting of June 9, 1904, same volume, I believe.

A. Of the executive committee?

Q. Of the executive committee, in relation to the lease of the Chicago office for Mr. Kruttschnitt.

A. (Reading.) At a meeting of the executive committee of
406 the Southern Pacific Company, June 9, 1904, the following action was had: The Chairman submitted a lease for floor space in the Merchants Loan & Trust Building, Chicago, for the office of Mr. Kruttschnitt, director of maintenance and operation, for use jointly by the Union Pacific, Southern Pacific, Oregon Short Line and Oregon Railroad & Navigation Company, for a term of three years, at an annual rental of $11,400, payable monthly in advance. Whereupon, on motion duly seconded, it was resolved that the above lease, now submitted, be and the same is hereby approved and confirmed.

Q. Page 67, volume 2, Southern Pacific executive committee.

A. About Advertising, Mr. Kellogg?

Q. Yes; page 67.

A. Southern Pacific executive committee meeting of March 1, 1906. The chairman submitted a letter from Mr. J. C. Stubbs, Traffic Director, dated February 23, 1906, enclosing a memorandum showing estimated advertising expenses for system lines for the fiscal year ending June 30, 1907, of which this company's proportion is $128,500. Whereupon, on motion duly seconded, it was resolved that the expenditure of $128,500 on advertising for the fiscal year ending June 30, 1907, be and the same is hereby approved and the chairman's action in authorizing the same is ratified and confirmed.

Q. Page 107 of the same volume; being meeting of July 23, 1906.

A. In relation to what?

Q. The purchase of the Coos Bay, Roseberg & Eastern Railroad & Navigation Company.

A. (Reading.) At that time the Chairman stated he had authorized the purchase from J. D. Spreckles & Bros. Co. for the sum of
$1,300,000, all of the property of the Coos Bay, Roseberg &
407 Eastern Railroad & Navigation Company; the Coos Bay &

Coquille Valley Railroad Company, including coal lands in Fibre Hill Coal Company and Alluvial Hill Coal Company, with their machinery, buildings, dockage, coal bunkers at San Francisco, and docks, coal bunkers, waterfront property, terminal grounds and town lots at Marshfield, and all property complete in that company which belongs to J. D. Spreckles & Bros. Co., and the entire property, including all bonds to be delivered under the guaranty of J. D. Spreckles & Bros. Co., as free and clear of all incumbrances and liabilities. Whereupon, on motion duly seconded, it was Resolved that the action of the president in authorizing the purchase of the property above described be and the same is hereby approved and confirmed.

Comr. LANE. Does that include any steamships?

Mr. CORNISH. I understand there were one or two small boats which were included.

Comr. LANE. Running from where to where?

Mr. CORNISH. Running up and down the coast from Coos Bay to San Francisco.

Q. Volume 2, page 131.

A. Advertising, Mr. Kellogg?

Q. Yes; that is the other letter in relation to advertising.

A. (Reading.) Meeting of the executive committee of the Southern Pacific Company, October 25, 1906. The Chairman submitted a letter from Mr. J. C. Stubbs, dated October 17, 1906, enclosing a memorandum showing additional estimated advertising expenses for system lines for the fiscal year ending June 30, 1907, of which this company's proportion is $316,260.33. Whereupon, on motion
408 duly seconded, it was Resolved that the expenditure of $316,-260.33 on additional advertising for the fiscal year ending June 30th, 1907, be and the same is hereby approved.

Q. Now, will you turn to the Union Pacific stockholders' and directors' meetings, volume 2, January 7, 1904. It is the meeting where Mr. Harriman was elected president and resolutions were passed with reference to the powers of the president.

A. (Reading.) A meeting of the board of directors of the Union Pacific Railroad Company, January 7, 1904. The following resolutions were adopted:

Resolved, that the by-laws of this company be amended in the following particular: Amend Section 1 of Article 6 to read as follows:

The president shall have general care, supervision and control of the company's business in all its departments under control of the board of directors and executive committee.

The offices of president and chairman of the executive committee may be held by the same person.

Further resolved, that the chairman of the executive committee be and he is hereby authorized to call a meeting of the board of directors for the purpose of acting on said amendment, in accordance with the provision of the by-laws.

Q. The amendment was adopted by the board of directors at a meeting on April 11, 1905, was it not?

A. April 11, 1905. A special meeting of the board of directors held April 11, 1905. The chairman stated that pursuant to the action of the board of directors taken January 7, 1904, the meeting
409 had been called for the purpose of acting on a proposition to amend Section 1, Article 6 of the by-laws. Whereupon, on motion duly seconded, it was

Resolved that the by-laws of the Union Pacific Railroad Company be amended so that Section 1 of Article 6 shall read as follows:

"Section 1: The president shall have general care, supervision and control of the company's business in all of its departments, under control of the board of directors and executive committee.

"The offices of president and chairman of the executive committee may be held by the same person."

Q. Now, if you will look at page 174 of the meeting of August 15, 1906, of the Union Pacific Company, in relation to the semi-annual dividends of $5 on the common stock, and a statement with reference to the deferring of the announcement.

A. Meeting of the board of directors of the Union Pacific Railroad Company, August 15, 1906. The following action was taken: The chairman submitted a statement showing the operations of the company, partly estimated, for the fiscal year ending June 30, 1906, and the financial condition of the company. Whereupon, after full consideration, upon motion duly made and seconded, the following resolutions were unanimously adopted, namely:

"Resolved (1) That a semi-annual dividend of $2 per share be and such dividend is hereby declared on the preferred capital stock of this company, payable October 1, 1906, to stockholders of record at 12 o'clock m., on the 15th day of September, 1906.

410 "Resolved (2) That a semi-annual dividend of $5 per share upon the common capital stock of this company be and such dividend is hereby declared, payable October 1, 1906, to stockholders of record at 12 o'clock m., on the 15th day of September, 1906."

Q. Turn to volume 3 of the executive committee—is that all?

A. There is a vote further regarding the authority to the committee.

Q. Yes; read the rest, please.

A. The following action was taken: (Reading.) "The chairman stated that, as a number of the directors were unable to attend the meeting, it seemed proper that announcement of the dividend should be deferred until they could be informed of the action taken at the meeting. And he suggested, therefore, that the announcement and publication of the dividend, provision for the closing of the transfer books, and also the question which had been discussed as to the particular revenues against which portions of the dividend should be charged be referred to the executive committee. Whereupon, upon motion duly made and seconded, it was unanimously Resolved that

the executive committee is hereby authorized and empowered to announce and publish the declaration of such dividend at such time as it may deem proper, and to authorize and provide for the closing of the transfer books for the purpose of said dividend, and for the purpose of the annual meeting of the stockholders to be held Tuesday, October 9, 1906, and to specify the income or other fund against which such dividend shall be charged, and to take such other
411 action in connection with the declaration, payment and notice of such dividend, as said committee may deem necessary or advisable."

Q. Now turn to volume 3 of the executive committee records of the Union Pacific Company, page 210, and read the action of the executive committee on that dividend.

A. Meeting of the executive committee of the Union Pacific Company August 16, 1906. The action of the board of directors at its meeting held August 15, 1906, in respect of dividends payable on the capital stock of this company was considered. Whereupon, upon motion duly made and seconded, it was unanimously resolved:

1. That for the purpose of such dividend and of the annual meeting of the stockholders to be held Tuesday, October 9, 1906, the stock transfer books of this company shall be closed at 12 o'clock m., on the 15th day of September, 1906, and re-opened at 10 o'clock A. M. on the 10th day of October, 1906.

Resolved (2) That the secretary of this company be and he is hereby authorized and directed to notify the secretary of the New York Stock Exchange on the 17th inst., and before the hour fixed for the opening of said Exchange on said date of the declaration of said dividends, and the treasurer of this company be and he is hereby authorized and directed to furnish notice of said dividends by publication of an advertisement in the usual form in papers published in the city of New York, as the chairman of the executive committee shall direct.

Q. If you will look at the Southern Pacific directors' meet-
412 ing, vol. 5, page 188. Please read the record there as to the declaration of dividends by the Southern Pacific directors.

A. August 15, 1906. At a meeting of the board of directors of the Southern Pacific Company, the chairman submitted a statement showing the operations of the company, partly estimated, for the fiscal year ending June 30, 1906, and the financial condition of the company. Whereupon, after full consideration, upon motion duly seconded, the following resolution was unanimously adopted, namely:

Resolved, that a semi-annual dividend of $2.50 per share to be known as first dividend be and such dividend is hereby declared on the common capital stock of this company, payable October 1, 1906, to bearers of dividend warrants No. 1, annexed to certificates representing such stock, upon presentation and surrender of such warrants to the assistant treasurer of this company at his office at No. 120 Broadway, New York.

The chairman stated that, as a number of the directors were unable to attend the meeting, it seemed proper that announcement of the dividend should be deferred until they could be informed of the action taken at the meeting. And he suggested, therefore, that the announcement and publication of the dividend and any other action deemed necessary, be referred to the Executive Committee. Whereupon, on motion duly made and seconded, it was unanimously resolved, that the executive committee be and it is hereby empowered to announce and publish the declaration of such dividend at such time and make such provision for the payment thereof as said
413 Committee may deem appropriate.

Q. That meeting was held on what day?

A. August 15, 1906.

Q. The same date as the Union Pacific meeting?

A. Yes.

Q. Will you please state what directors were present at that meeting of the Southern Pacific? At what hour was that?

A. At 1.30 in the afternoon.

Q. August 15, 1906?

A. Yes, sir.

Q. What directors were present?

A. Directors De Forest, Evarts, Goelet, Harriman, Lovett, Mills, Stillman, Thorne and Vandeventer.

Q. Who were absent, do you remember?

A. I can very readily ascertain.

Q. Well, that is the Southern Pacific?

A. Yes.

Q. If you will read those names off I will check them from this list you gave us.

A. De Forest, Evarts, Goelet, Harriman, Lovett, Mills—I don't know which Mills—Stillman, Thorne and Vandeventer; nine out of fifteen.

Q. Now, the absent directors, according to that, of the Southern Pacific, were, W. D. Cornish——

A. He was one of them.

Q. H. E. Huntington?

A. Yes.

Q. He lives in Los Angeles, does he?

A. I don't know where he lives.

Q. He does not live in New York that you know of, does he?

A. Part of the time, I guess, in Ossining.

Q. Marvin Hughitt?

A. Yes, sir.

Q. C. H. Mackay?

A. Yes, sir.

Q. And David Willcox?

A. Yes, sir. That would make only fourteen, wouldn't it?

414 Q. And D. O. Mills or Ogden Mills, you don't remember which one was present at the meeting?

A. Yes; I was not present at the meeting; I don't know which one was present.

Q. Will you turn to the record book of the Union Pacific, page 174, and see what directors were present at that meeting which you just read, and check them to see the absent ones?

A. At the board meeting of August 15, 1906, there were present——

Q. (By the Chairman.) At what hour was that meeting held?

A. 1 o'clock, sir. Earling, Frick, Harriman, Lovett, Peabody, Rockefeller, Rogers, Stillman and Goelet.

Q. There were absent who?

A. Directors Oliver Ames——

Q. Of Boston?

A. Yes, sir. W. D. Cornish.

Q. Marvin Hughitt?

A. Marvin Hughitt.

Q. David Willcox?

A. David Willcox.

Q. P. A. Valentine?

A. Yes, sir.

Q. Of New York?

A. I understand he lives in Chicago part of the time.

Q. And Joseph F. Smith, of Salt Lake City?

A. Yes, sir.

The CHAIRMAN. Mr. Millar, kindly tell us what notice is given of a meeting of directors.

WITNESS. At the time of these meetings the by-laws provided for five days' notice, either by letter or telegram.

Q. Was that notice given in these two cases?

A. I can not testify as to that because I happened to be away at the time; personally I have no doubt it was.

Q. Read the minutes of the executive committee.

A. Of the Southern Pacific?

415 Q. Southern Pacific, page 114, Vol. 2.

A. August 16, 1906. The action of the board of directors at its meeting held on August 16, 1906, in respect of dividends upon the capital stock of this company was considered. Whereupon, upon motion duly made and seconded, it was unanimously resolved that the secretary of this company be and he is hereby authorized and directed to notify the secretary of the New York Stock Exchange on the 17th instant and before the hour fixed for the opening of said Exchange upon said date of the declaration of said dividends; and the assistant treasurer of this company be and he is hereby authorized and directed to give notice of said dividend, by publication of advertisement in the usual form, in papers published in the city of New York, as the chairman of the executive committee shall direct.

Q. What directors were present at that executive meeting?

A. De Forest, Harriman, Lovett and Stillman.

The CHAIRMAN. Mr. Millar, do the by-laws provide for the notice of a meeting of the executive committee?

WITNESS. No, sir. That is a stated meeting held weekly, and this was the—well, in answering you, I was speaking then of the Union Pacific. The last record I read was the Southern Pacific. They have stated meetings held bi-weekly, and these——

The CHAIRMAN. And these meetings all occurred at the stated times?

WITNESS. These executive committee meetings were stated meetings.

416 Q. Was this a stated meeting?

A. This was the regular bi-weekly meeting of the executive committee.

Q. Where was it held—at the office, 120 Broadway?

A. Yes, sir.

The CHAIRMAN. Were meetings of the executive committee of either company held at other times than the stated dates, under the by-laws?

WITNESS. Occasionally, provision being made for special meetings; yes, sir.

The CHAIRMAN. How—by adjournment, or by call?

WITNESS. I should say more frequently by adjournment and occasionally by call; but always by notice.

The CHAIRMAN. And what would the notice be in case of a special meeting by call?

WITNESS. If an adjourned meeting, the fact that it was an adjourned meeting is stated in our form of call; if it was a special meeting it would be so stated, but no other detail.

The CHAIRMAN. Anything prescribed in making the notice?

WITNESS. I do not recall precisely.

Mr. LOVETT. The provision of the by-laws of the Southern Pacific is as follows:

"Regular meetings of such executive committee shall be held at such times as the committee shall from time to time determine. Special meetings may be called at any time by the chairman or any three members of the committee."

The CHAIRMAN. Not providing how they shall be called or

417 upon what notice, I suppose you could call them up by telephone and have them present in a few minutes?

Mr. LOVETT. Yes, actual notice, I think, is all that is required.

Q. What directors were present at the Union Pacific meeting, page 310, Vol. 3?

A. At the meeting on August 16, 1906, of the Union Pacific Executive Committee, there were present Directors Harriman, Lovett and Stillman.

Q. Now, will you turn to Vol. 3 of the records of the Executive Committee of the Union Pacific, pages 242 and 243?

A. Yes, sir.

Q. And read the resolution in relation to the ownership of the Fruit Express?

A. A meeting of the Executive Committee of the Union Pacific directors held December 13, 1906. The chairman stated that the contract between this company and the Armour Car Lines with reference to the transportation of fruit and other perishable freight contained a provision authorizing the termination thereof upon six months' notice from either party, and that the latter had given notice of its intention to terminate such contract. That he was advised that under the Interstate Commerce Act as amended, railroad companies are required to provide refrigerator cars and to show the charges for such cars and for the service of refrigeration, ventilation, etc., in their tariffs and to include such charges in their freight bills.

That under the circumstances it seemed advisable for this company and the Southern Pacific Company to provide for the incorporation of a company whose stock shall be taken by them and acquired
418 to furnish them and their allied lines the refrigerator cars required by them and to take over and carry on the business of furnishing cars for traffic originating upon their lines which requires refrigeration and ventilation, and of attending to the icing and ventilation of such cars. And that pursuant to this plan he had heretofore caused a corporation known as Pacific Fruit Express Company to be organized under the laws of the State of Utah, with an authorized capital of $12,000,000, and had arranged with W. H. Bancroft to subscribe for 11,996 shares, and P. L. Williams, D. E. Burley, J. A. Reeves, and F. H. Knickerbocker, each to subscribe for one share of such capital stock, and that subscriptions had been made for account of Union Pacific Railroad Company and Southern Pacific Company, each to take one-half of the shares so subscribed for.

He further stated that under the laws of the state of Utah it was necessary that 10 per cent of the authorized capital stock should be paid in in cash at the time of the organization of the company, and that he had directed the treasurer of the Union Pacific R. R. Co., to pay that amount, one-half of it to be repaid to said company by the Southern Pacific Company.

The Chairman further stated that in furtherance of this plan he had some time ago authorized the purchase for account of said Pacific Fruit Express Company of 6,000 refrigerator cars at a cost of $1,700 each, amounting in the aggregate to $10,200,000, some of which cars were about ready for delivery, and it was hoped that the others would be delivered by the time or very soon after
419 the expiration of the contract with the Armour Car Lines Company under the notice heretofore given. And he further stated in order to provide the Pacific Fruit Express Company with the funds necessary to pay for such cars, it should issue its stock from time to time to the Southern Pacific Company and Union Pacific R. R. Co., and each should take one-half of such stock when and as issued at par.

The Chairman further stated that it might be necessary or advisable to admit some other railroad companies as stockholders of said Pacific Fruit Express Company, but that this could be done later by the sale by the Southern Pacific and Union Pacific R. R. Co., of portions of the stock so taken by them to such other railroad companies.

On motion duly made and seconded, it was unanimously resolved:

1. That the action of the president of this company in causing the incorporation and organization of the Pacific Fruit Express Company under the laws of the State of Utah with an organized capital stock of $12,000,000, and an arrangement for the subscription on account of this company for 6,000 shares of such capital stock and for payment into the treasury of said company of 10 per cent of the authorized capital stock, be and such action is hereby ratified and approved.

2. That the president of this company be and he is hereby authorized to pay and receive or arrange for the subscription and for the payment for and receipt of one-half of the remaining capital stock of said Pacific Fruit Express Company from time to time as issued by said company pursuant to the recommendation of the chairman as above set forth.

420 3. Resolved that this company as a subscriber to the capital stock of said Pacific Fruit Express Company hereby assents to the purchase by said company of 6,000 refrigerator cars at a cost of $1,700 each, amounting in the aggregate to $10,200,000, as above stated, by the chairman of this committee.

Q. Will you turn to pages 294 and 295 of the same volume, in relation to the Equipment Association?

A. Isn't it page 244, the same date?

Q. Perhaps it is.

A. The Equipment Association organization?

Q. Yes, I guess that is right.

A. At the same meeting the following action was taken:

The Chairman stated that in his opinion it was advisable to have a corporation formed for the purchase of equipment to be used by this company and its allied lines, the intention being that the Equipment Company should take title to the rolling stock and then lease it to the various associated companies, or at all events to hold the title thereto until such rolling stock should be distributed among the said companies. That pursuant to such plan he had heretofore caused a corporation to be organized under the laws of the State of Utah, known as Union Pacific Equipment Association, with an authorized capital stock of $100,000, and had caused the entire amount of this stock to be subscribed for on account of Union Pacific Railroad Company as follows: W. H. Bancroft, 996 shares; P. L. Williams, W. S. McCornick, E. Buckingham and C. H. McNitt, 1 share each. That under the laws of the State of Utah it was necessary that 10 per cent of the authorized capital stock of this corporation should be paid in in cash at the time of the organization of

421 the company, and he had directed the treasurer of the Union Pacific Company to pay this sum, namely, $10,000, into the treasury, of the Union Pacific Equipment Association, which had been done. On motion, duly made and seconded, it was unanimously resolved that the action of the chairman of the executive committee, in causing the organization of Union Pacific Equipment Association under the laws of the State of Utah, with a capital stock of $100,000, and in causing the said stock to be subscribed for account of the company, and in directing that 10 per cent of the capital stock be paid in cash, and the action of the treasurer in paying $10,080 into the treasury of the State of Utah upon such subscription be and the same is hereby ratified and approved and confirmed.

Further resolved, that the treasurer of this company be and he is directed and authorized to pay into the treasury of the Pacific Equipment Association the remainder of such subscription, namely, the sum of $90,000 when and as the same shall be called by the board of directors of said Union Pacific Equipment Association.

Mr. Millar made the following statement with reference to the pension system of the Union Pacific Railroad Company:

I would like to explain about that pension roll. If I gave the impression in my testimony in reference to that matter, or if counsel did, that it was to take in the Southern Pacific, that was not the object of the amendment, but to give the men working in the different companies the right to count the years when they changed into another company.

Mr. KELLOGG. Certainly. We understood that. The Southern Pacific service was included?

422 Mr. MILLER. It has a pension service of its own.

Mr. KELLOGG. That is all.

423 Mr. SEVERANCE. We will next offer, pursuant to agreement, portions of the testimony given by William Mahl, a witness before the Interstate Commerce Commission, who testified on the fourth day of January, 1907, at the city of New York. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Mahl were upon the stand giving the same testimony.

Mr. EVARTS. Yes.

WILLIAM MAHL

testified.

Examined by Mr. SEVERANCE:

Q. Mr. Mahl, what official position do you occupy with the Union Pacific Railroad Company?

A. That of Comptroller.

Q. What official position have you with the Southern Pacific?

A. Comptroller.

Q. And with the Oregon Short Line?

A. Comptroller, also.

Q. And with the Oregon Railroad & Navigation Company?

A. The same.

Q. Have you any official connection with the Pacific Mail Steamship Company?

A. Yes, sir.

Q. What is it?

A. Comptroller.

Q. Have you any official connection with the Occidental & Oriental Steamship Company?

A. None that I know of.

Q. Have you any official connection with any other steamship line that is affiliated or controlled by the Southern Pacific or Union Pacific interests?

A. No, sir.

424 Now, as comptroller of the Union Pacific Railroad Company, what, in general, are your duties?

A. My jurisdiction extends over the matters in the New York office; the payment of moneys, the keeping of the accounts of moneys that are received, and the disbursements.

Q. Does that include the accounts of moneys received from sales of stocks and bonds?

A. Yes, sir.

Q. Does it include the accounts relating to the disbursements in the purchase of stocks and bonds?

A. Yes, sir.

Q. And does that testimony apply as well to the other companies as to the Union Pacific?

A. All the companies of which I am comptroller, so far as they are made in New York.

Q. Now, Mr. Mahl, it appears that Mr. Erastus Young, of Omaha, is general auditor of these companies. What relations have you with Mr. Young? Does he report to you?

A. Only a summary of the operations.

Q. What jurisdiction has Mr. Young in the accounting department?

A. Entire jurisdiction.

Q. That is, all the operating accounts are controlled by Mr. Young, of these four companies?

A. Each of these companies has an auditor of its own.

Q. I understand. But Mr. Young is the general auditor, and they are all under his direction, are they not?

A. Yes, sir.

Q. And Mr. Young is, to a certain extent, I suppose, under your direction, isn't he?

A. None whatever.

Q. He merely reports to you a summary of the operations because you have charge of the accounts relating to the financiering of the company?

A. In New York.

425 Q. The financiering is done in New York, isn't it?

A. Yes, sir.

Q. Your office is at 120 Broadway?

A. Yes, sir.

Q. Now, Mr. Mahl, you have in your office the accounts which show the properties owned by those various companies, haven't you—stocks and bonds and that sort of thing?

A. Yes, sir.

Q. Between what ports do the boats of the Pacific Mail ply?

A. Central America, China and Japan.

Q. Honolulu?

A. I believe so.

Q. San Francisco is the home port of those ships?

A. At present.

Q. Do you recall, Mr. Mahl, what percentage of the capital stock of the Pacific Mail is owned by the Southern Pacific Company?

A. That is shown in the annual report. Out of $20,000,000 capital stock the Southern Pacific Company controls $10,010,000; a fraction over a half.

Q. Just a majority?

A. Yes, sir.

Q. By "controls," you mean, do you not, that the Southern Pacific owns that stock?

A. Yes, sir.

Q. What other ships outside the ships of the Pacific Mail does the Southern Pacific Company own, either by stock ownership or by direct ownership?

A. It owns directly a steamship line between New York, Galveston and New Orleans.

Q. You have stated that the Southern Pacific Company owns the ships running from New York to Galveston and New Orleans?

A. Yes, sir.

Q. What other steamships, if any, does the Southern Pacific own?

426 A. None that I now recall. They are all published in the annual report.

Q. Now, Mr. Mahl, you, as comptroller of the Union Pacific, have information as to the ownership of any stock in any steamship lines or any steamships directly owned by that company?

A. Yes, sir.

Q. Do they own any ships or any stock in steamship lines, steamship corporations?

A. I think the annual report shows that.

(Counsel hands report to witness.)

WITNESS. I think we show in the table of assets here for the Union Pacific, that they own the steamers Aragonia and Numantia.

Q. They belong to the Union Pacific?

A. Yes, sir.

Q. Do you know anything about the steamship company called the Occidental & Oriental Company? Hasn't the Union Pacific stock in that company?

A. Yes, sir.

Q. Now, Mr. Mahl, what steamships, if any, does the Oregon Railroad & Navigation Company control or own?

A. None that I know of. She is a river line. I think it is stated here in the annual report. She is a water line from Portland, Oregon, to Ilwaco; about 258 miles of river line along the Columbia River to various points.

Q. Did they in 1905 have any ships? If so, what hase become of them?

A. I couldn't say now, unless I referred to the report.

Q. I call your attention to the fact that at a meeting of the executive committee of the Oregon Railroad & Navigation
427 Company held on the 13th of April, 1905, it appeared that "the chairman, Mr. Harriman, stated that when the steamships 'Arabia,' 'Aragonia,' 'Nicomedia,' and 'Numantia' were chartered by the Portland & Asiatic Steamship Company (capital stock of which is owned by this company) it was understood that this company would indemnify the Hamburg-American Line, the owners of such steamships, against loss and damage arising by reason of the arrest, detention, seizure or confiscation of any of said ships by the Russian and Japanese Governments, due to or caused by the carrying of contraband of war." Do you know anything about a corporation known as the Portland & Asiatic Steamship Company, the stock of which is owned by the Oregon Railroad & Navigation Company?

A. Yes, sir.

Q. That Company is still in existence, is it not?

A. So far as I know.

Q. Will you kindly have made up in your office a statement showing the original stocks and bonds of the Union Pacific and the dates and amounts of increase, and the amounts received for such increased stock and bonds? I asked Judge Lovett for it the other day, but I understand you have not yet made them up.

A. Yes, I have it.

Q. Oh, I beg your pardon. Judge Lovett has just handed me the statement.

(Paper marked Complainant's Exhibit 56 (Mahl), which was Mahl Exhibit 1 in Interstate Commerce Commission record, and paper marked Complainant's Exhibit 57 (Mahl), which was Mahl Exhibit 2 in Interstate Commerce Commission record.)

Mr. Severance. It is admitted that Complainant's Exhibits
428 56 and 57 (Mahl) are correct copies of Exhibits 1 and 2 in Mr. Mahl's testimony before the Interstate Commerce Commission, concerning which latter exhibits Mr. Mahl gave the following testimony: Q. I show you exhibits 1 and 2 (Mahl) and will ask you if those papers were prepared under your direction in your office? A. They were. Q. And they are correct, are they? That is your belief? A. Yes, sir.

Mr. Severance. I offer in evidence Complainant's Exhibits 56 and 57 (Mahl).

Complainant's Exhibit 56 is as follows:

COMPLAINANT'S EXHIBIT 56. (Mahl.)

UNION PACIFIC RAILROAD COMPANY.

Common capital stock authorized, issued, and outstanding December 31, 1906.

Authorized.		Outstanding.	Remaining to be issued.
Date.	Amount.		
July 1, 1897	$61,000,000	$61,000,000	
January 10, 1899	27,460,100	27,339,300	$120,800
October 9, 1899	7,718,600	7,690,600	28,000
March 23, 1901	100,000,000	99,450,000	
Total	196,178,700	195,479,900	

Purposes for which stock was issued or was to be issued.

$61,000,000. Issued to Reorganization Committee.

27,460,100. Issuable against $27,460,100 shares capital stock Oregon Short Line R. R. Co.

7,718,600. Issuable against $7,718,600 shares common capital stock of the Oregon Railroad & Navigation Co.

100,000,000. Issuable against a like amount of Union Pacific R. R. Co. First Lien Convertible 4% bonds. Stock to the amount of $99,450,000 face value were issued in exchange for convertible bonds.

W. M.

January 2, 1907.

Complainant's Exhibit 57 is as follows:

COMPLAINANT'S EXHIBIT 57. (Mahl.)

UNION PACIFIC RAILROAD COMPANY.

Preferred captital stock authorized, issued, and outstanding December 31, 1906.

Authorized.		Outstanding.	Remaining to be issued.
Date.	Amount.		
July 1, 1897	$75,000,000	$75,000,000	
October 9, 1899	14,841,000	14,669,500	$171,500
October 9, 1899	10,159,000	9,899,800	259,200
Total	100,000,000	99,569,300	

430 *Purposes for which stock was issued or was to be issued.*

$75,000,000. Issued to Reorganization Committee.
14,841,000. Issuable against $14,841,000 O. S. L. R. R. C. Income B. Bonds.
10,159,000. Issuable against $10,159,000 O. R. R. & N. Co. Preferred Stock.

W. M.

January 2, 1907.

Q. Is it not a fact that the Oregon Short Line this fall declared a dividend of 50 per cent on its stock held by the Union Pacific, which nearly exhausted its surplus?

A. It declared a dividend of 50 per cent, the accumulation for a number of years.

Q. Yes, I understand that, but did it not take $13,000,000 and more to pay that dividend and was not the entire accumulated surplus only $16,000,000, or something of that sort?

A. That surplus is an operating surplus, a surplus from operation—transportation operation. It is not a surplus of money from the sale of securities.

Q. Now, Mr. Mahl, I will ask you generally whether outside of these summaries, by Mr. Young, that are sent to you, you have any persons along the line that send you any reports?

A. I receive a report, for instance, from the officers of the Texas & New Orleans Railroad, not from Mr. Young.

431 Q. From the Pacific Mail?

A. Yes, that is a separate and distinct corporation.

Q. And you have an auditor of the Pacific Mail in San Francisco, haven't you?

A. Yes.

Q. And he reports to you?

A. No, he reports to Mr. Young.

Q. How is that?

A. He reports to Mr. Young.

Q. Do you get any reports at all from the Pacific Mail?

A. Yes.

Q. From whom?

A. From the auditor in San Francisco.

Q. That is what I asked you a moment ago. You said he reported to Mr. Young. Doesn't he send you reports, too?

A. Yes.

Q. And what is his name.

A. Mr. Railton, I think it is. It is given in the last report of the company.

Q. So that he sends a report to Mr. Young and also to you?

A. Yes.

Q. And Mr. Young has his office at Omaha, doesn't he?

A. Yes.

Q. And he is the general auditor of the Union Pacific and the Southern Pacific and of the Pacific Mail?

A. I believe so; the reports will show it. (Referring to paper.) Yes.

Q. Where is the auditor who has immediate jurisdiction over the accounts of the line of steamers running from New York to Galveston and New Orleans?

A. In New York.

Q. What is his name?

A. Parker.

Q. Do you know his first name?

A. I don't recall it.

Q. W. C.?

A. Yes.

Q. To whom does he make reports?

A. He makes reports to myself and I think also to Mr. Young.

432 Q. Mr. Young and yourself?

A. Yes.

Q. Now, as long as the Occidental and Oriental Steamship Company was in operation, were any reports of any sort, of their operation sent to you?

A. Yes, a financial statement at the end of a month.

Q. You still get that, don't you?

A. I cannot say that I do now.

Q. You don't know?

A. I would have to ascertain.

Q. Who is the auditor of the O. R. & N.? Where is his office?

A. Portland. I think his name is Mr. Sterling; I think Mr. Sterling is auditor.

Q. Yes, Mr. Sterling. Does he send reports to you?

A. Yes.

Q. How often?

A. Once a month.

Q. Where is the office of the auditor of the Short Line?

A. Salt Lake City.

Q. And who is the auditor?

A. C. J. McNitt.

Q. Does he report to you?

A. He sends his statements to me. He reports directly to Mr. Young.

Q. Therefore, you get from them—well, you also get a report from Mr. Young or somebody at Omaha, don't you, in connection with the Union Pacific?

A. Yes.

Q. So that each branch of this system, the Southern Pacific, the Union Pacific, the Short Line, the O. R. & N., and the steamship lines both on the Atlantic and Pacific, in some form make a report to you once a month of their financial operations so that you keep in touch with all of them?

A. Yes.

Q. And that is sent to you here in New York?

A. Yes.

Q. Does Mr. Young, the general auditor, make a report to you?

A. Yes.

433 Q. Can you tell who has charge of the division of joint office expenses where the same offices are used by the different parts of the system?

A. For the offices out on the line I think that is done in the general auditor's office.

Q. That does not come under your jurisdiction?

A. That does not come under my jurisdiction.

Q. You don't know about that.

A. No.

Q. And you could not state anything in connection with that sort of thing?

A. No, sir, nothing.

Q. Who could tell us that—Mr. Young?

A. I should think so, yes.

Q. And you don't know, I suppose, who makes the division; that is, who fixes the amount that should be charged to each company?

A. No.

Q. Now, how are the expenses of maintaining the offices of traffic director, director of maintenance and operation, director of purchases, secretary, general auditor, comptroller, and so forth, divided? I show you a memorandum that I think was prepared by you?

A. Yes. The director of maintenance and operation is paid in Chicago, and I don't know who could furnish that information. The traffic director, the director of purchases, the secretary and the comptroller, are paid in New York, and the apportionment is made in New York.

Q. On what basis?

A. On the basis—I think in nearly all instances the expenses of the office of director of purchases, allotted in proportion to the number of locomotives and cars owned by the respective companies.

434 Q. Now, by respective companies, you mean the Southern Pacific, the Union Pacific, the Oregon Short Line, and the Oregon Railroad & Navigation Company?

A. Yes.

Q. All right, go ahead.

A. Expenses of the transfer office allotted actually to the various companies as near as those can be ascertained. That is the stock transfer.

Q. The stock transfer is allotted to the various companies?

A. Yes. And all salaries and expenses in New York, including salaries of Mr. J. C. Stubbs, Mr. E. O. McCornick, Mr. P. C. Stohr and Mr. H. B. Thrall, allotted on the basis of gross transportation receipts.

Q. That is to say, Mr. Stubbs is the director of traffic at Chicago for all the lines, isn't he?

A. Yes.

Q. And Mr. Stubbs' salary and the expenses of his office are divided between the Southern Pacific, the Union Pacific, the O. R. & N., and the Oregon Short Line on the basis of the gross transportation receipts of those respectively?

A. No, let me correct this.

Q. All right.

A. Not the expenses. I don't know anything about the expenses of those.

Q. You don't know about the expenses?

A. No. I don't know anything about the salaries of his office. This merely has reference to his own salary.

Q. That is, by your testimony, then, you mean that the salaries of Mr. Stubbs, the director of traffic, Mr. E. O. McCornick, Mr. P. C. Stohr, assistants to Mr. Stubbs, and Mr. H. B. Thrall, who is the railway agent of all the lines, are divided on the basis of the
435 gross transportation receipts, of the respective lines? That is correct, is it?

A. That is correct.

Q. And those amounts are paid from here?

A. Yes.

Q. As far as their expenses are concerned and the expenses of maintaining their offices, from what source can you ascertain the information as to that provision?

A. I should think you would have to obtain that at Chicago?

Q. From whom?

A. I suppose from the offices.

Q. Mr. Young wouldn't have that?

A. He might and might not.

Comr. KNAPP. Do the gross receipts which you referred to there, which are the basis of division of salaries of the officials named, include receipts from passenger traffic as well as freight traffic?

A. Yes; receipts from all sources, rents, and so forth.

Q. Can you tell what person or what committee or party decides how the salaries paid to these gentlemen who are acting for all the companies are to be divided or apportioned among the lines?

A. I don't know.

Q. Well, your own salary, for instance, is apportioned to the four lines, isn't it?

A. Yes.

Q. Who employed you or appointed you?

A. The chairman of the committee.

Q. Mr. Harriman?

A. Yes.

Q. Who directed you as to the method in which you should apportion your salary?

A. I don't think there was any particular direction given about that. I believe we followed what was established out on the line of the road, and it is customary by all railroads to allow salaries
436 of traffic officers along certain lines or divisions, for instance by transportation receipts. I think the companies just followed what is customary elsewhere.

Q. Mr. Mahl, you did not assume, did you, without direction from some person, to charge to the Southern Pacific a certain amount per month or per year, and the Union Pacific a certain amount, and so on, to make up your salary? You were instructed by some one, were you not?

A. I can not recall now how that division was made. I can go back to the papers and find out and see.

Q. You merely know that it was made?

A. Yes, sir.

Q. And you know you were employed by Mr. Harriman, but as to whether he directed that kind of a division you do not know?

A. I do not recall now.

Q. Who directed you as to the method of dividing the salaries of other officials than yourself, where the officials were common all over the system? or did you do that of your own motion?

A. No; I think it was done through Mr. Young, or rather upon conference with him or following the practice which was followed out on the line of the road in similar instances.

Q. Who had this conference with Mr. Young? Did you have it?

A. No, sir.

Q. So you think that Mr. Young made this division without authority from the board, or boards of directors, or executive committees or the chairman?

A. No; that might have been originally agreed upon, and I think we simply followed in that matter what was established.
437 Q. When you came there?

A. Yes.

Q. Now, in making these divisions, you do not separately charge the steamship lines, do you, with their proportion? or do you make a separate charge against the steamship lines?

A. We make a separate charge against them; yes, sir.

Q. Against the Pacific Mail you make a specific charge because you only own a part of the stock, but do you make any division of that charge as between the rail lines of the Southern Pacific and the steamship lines that are directly owned by the Southern Pacific?

A. I do not think so. I don't know. Those divisions are made in the general auditor's office.

Q. Do you know, Mr. Mahl, from anything that is in your office, as to who has charge of the distribution of purchases, such as cars and locomotives, between the different lines, or would you have to get that from Mr. Thorne?

A. We would have to get that from Mr. Thorne.

Mr. SEVERANCE. Judge Lovett suggests this to refresh your recollection, that one or the other of the companies in the first instance pays these various salaries, and then a charge is made against the other companies for their respective proportions.

WITNESS. That is correct.

Q. That is the way it is done?

A. Yes, sir.

Q. It amounts to the same thing?

A. Yes, sir.

Q. Have you made up a statement, Mr. Mahl, of the persons in whose names the 900,000 and the 180,000 shares of Southern Pacific stock appear of record?

A. I haven't anything to do with that.

Mr. LOVETT. We will furnish that. I didn't ask Mr. Mahl
438 about that. We will furnish a list of the names of the individuals who hold the stock. I neglected to ask Mr. Mahl for them.

Q. Mr. Mahl, you can, I assume, without great difficulty, make up for us a statement of the aggregate tonnage hauled by the various lines of the system, can't you? That is reported in your office.

A. The annual report shows the entire tonnage hauled.

Q. We can find that ourselves by looking at the reports?

A. Yes, sir.

Q. Are the Oregon Short Line and the Oregon Railroad & Navigation kept separate from the Union Pacific?

A. They are; and it is reported in the reports to the Interstate Commerce Commission.

Q. Separately?

A. Yes, sir.

Q. Now, Mr. Mahl, do you make up the statistics that go into the annual reports of your company?

A. Yes. Rather, I should amend that by saying that I aggregate them and compile them from those reports which come in from along the roads.

Q. And you make up the items or compile the items, showing the total mileage, the revenue per ton per mile, and the ratio of net to gross earnings, operating expenses, cost of conducting transportation, gross earnings per mile, and the net earnings per mile?

A. Yes, sir.

Q. And those statements as submitted, are, to the best of your belief, correct?

A. Yes, sir.

Q. Did you prepare the figures upon which, or do you prepare figures upon which the board of directors or executive committeemen act in determining the rate of dividend to be paid?

439 A. Yes, sir. But let me qualify that. I prepare the statements for them that they want, the purpose for which they do not always tell me. I am not asked about them. I submit statements to them of the operations of the companies from time to time.

Q. Now, the Union Pacific at present is paying dividends at the rate of 5 per cent each half year, isn't it? It was put on at a 10 per cent basis last summer? That is true, isn't it?

A. There wasn't anything at all about the basis it was put on. We declared a dividend of 5 per cent.

Q. Wasn't that stated in the resolution of the board, that it was a 5 per cent semi-annual dividend?

A. That would not be for me to answer. I don't know anything about that.

Q. Now, let me ask you when you made up this statement for the consideration of the Union Pacific board, before they declared that dividend, did you include among the net earnings applicable to the payment of dividends any profits in the handling of stocks or securities, or did you simply take the profits that were earned in the operation of the railroad?

A. The operations of the railroad as well as the income from investments.

Q. As well as the income from investments?

A. Yes, sir.

Q. By "Income from investments" do you mean the interest or dividends received upon stocks or bonds owned by the company?

A. Yes, sir.

Q. That is all you mean?

A. Yes, sir.

Q. You don't mean money that might be made by buying stocks or bonds at a certain figure and selling them afterwards at
440 a higher figure?

A. No, sir.

Q. Have you, Mr. Mahl, where you can readily lay your hand on it in your office, the statement which you prepared for the use of the directors at that meeting?

A. I think I could—I might find it.

Q. We would like to have that produced.

A. The statements that are submitted there are submitted every week.

Comr. LANE. Mr. Severance, I understood Mr. Mahl a moment ago to answer to the effect that if the profit was made in a stock transaction that it did not go into the fund from which dividends were paid.

Mr. SEVERANCE. That is what he stated.

Comr. LANE. Well, now, is that so?

Mr. MILBURN. I misunderstood the question, if that was it. That is, if there was a profit realized on an actual transaction, I don't know what the witness would answer, but the question put was, as I understood it, whether on realized profits, that is, stock had gone up——

Mr. SEVERANCE. No, I said, Mr. Milburn—I asked whether if stocks or bonds were purchased at a certain figure and were thereafter sold at a profit, at a higher figure, whether the profit so made

went into the gross profits which he submitted to the directors and was applicable to the payment of dividends, and he said they did not; but only dividends upon stocks held by the company, or the bonds held by the company.

WITNESS. There might have been some few minor instances; possibly not more than $50,000 or $100,000 that might have
441 gone into it.

Q. That would be contrary to your custom?

A. No. The annual report shows exactly what has gone into the profits.

Q. You can produce this statement? I am not speaking of the annual report. We do not want to have you make any mistake.

Mr. LOVETT. I think that statement which was referred to can be produced. I think it was filed with the secretary; and that, of course, would be the best evidence of what it shows. We have no objection to informing you as to how that statement was made up. We will produce it.

Comr. LANE. You will produce it?

Mr. LOVETT. Yes, sir; we will produce it. I think it was filed with the secretary.

Comr. LANE. This statement, Mr. Severance, won't show whether they bought a block of stock and that stock went up and money was made on it, whether that money made on it went into the fund out of which dividends were paid, will it?

Mr. MILBURN. Judge Lovett says it will.

Mr. LOVETT. As a matter of fact, it only shows the income from the transportation business, and the income from the investments, which Mr. Mahl has stated. I understand it as Mr. Mahl does. We will get the statement and that will show. If any profits of that sort were included they will appear from the statement.

Q. Will you show me on this annual report the item showing the surplus, the increase in the surplus during the year represented by that report, covered by that report?

442 Comr. HARLAN. What report is that?

Mr. SEVERANCE. The Union Pacific annual report for the year ended June 30, 1906.

WITNESS. This. [Indicating.]

Q. That is, the surplus of the Union Pacific on the 30th day of June, 1905, was $34,943,194.42, and on the 30th of June, 1906, the profit and loss surplus was $42,796,026.39, or an increase of a little over $8,000,000?

A. Yes, sir.

Mr. LOVETT. To guard against a misapprehension there, I would like to call your attention to the fact that that is a combined statement of the Oregon Short Line, the Union Pacific, and the Oregon Railroad and Navigation Company, and not the Union Pacific Railroad Company alone. These income accounts and balance sheets are shown separately in the annual reports of each of these companies filed with the Commission. Mr. Mahl then combines these figures in

a report for the information of stockholders; that is a consolidated statement of the three companies.

Mr. SEVERANCE. Would those various items, the three items, make up this total shown in the annual report made to the Commission?

Mr. LOVETT. Yes.

Q. Of course, Mr. Mahl, whatever profits are made by the Oregon Short Line, or by the Oregon Railroad & Navigation Company, go into the treasury of the Union Pacific, do they not, directly or eventually?

A. All in the net dividends?

Q. Yes, certainly in the net dividends; and from time to time dividends are voted on those stocks which are held by the
443 Union Pacific, and the money goes into the treasury in that way?

A. Yes, sir.

Q. And out of those dividends, and out of the surplus from operations, the Union Pacific makes its dividends as well as its income from other stocks or bonds it may hold?

A. Yes, sir.

Q. You treat them all in the same way, do you not?

A. Yes, sir.

Q. Is the annual report of the Union Pacific here?

Mr. LOVETT. You have it in your hand.

Q. I mean the report made to the Commission.

A. It is not here.

Q. Who makes up these reports to the Interstate Commerce Commission? Do you make those, or does Mr. Young?

A. No. I think they are usually made up in my office. The operating details are filled out on the line of the road, and we add the financial details.

Q. Do you keep an account, Mr. Mahl, which shows the profits realized by the Union Pacific Railroad Company in its stock and bond operations arising from the purchase and sale of stocks?

A. Not always, exactly. On those lines we do not always. When we sell a stock we do not always make a division; sometimes we do, and sometimes we do not. We do not always write up and make a division as to the profit, and again in some cases we do.

Q. Well, now, take for instance, Mr. Mahl—I think it was the Oregon Short Line that bought a large amount of stock of the Northern Pacific Railroad Company; did it not?

A. Yes, sir.

444 Q. And that stock was converted into Northern Securities stock, was it not?

A. Yes, sir.

Q. Exchanged for it, I mean?

A. Yes, sir.

Q. And then afterwards the Northern Securities stock was exchanged for Great Northern and Northern Pacific stock, in certain proportions; that is, such of it as you did not sell in the meantime?

A. Yes, sir.

Q. You had sold some of your Northern Securities stock as such, hadn't you?

A. Yes, sir.

Q. And you afterwards sold a considerable amount at least of the Northern Pacific and Great Northern?

A. Yes, sir.

Q. Have you sold it all yet?

A. I can not recall now. I don't know.

Q. Don't you keep a summary which shows the profits that the Oregon Short Line made on that transaction?

A. No, I don't think I did in that case. If you will give me the annual report, I will state just what has been done.

Q. You may go ahead. You were going to read something from the report?

A. In the annual report for the year ending June 30, 1906——

Q. (Interrupting.) That is, the report to your stockholders?

A. Yes, sir; of the Union Pacific, there is this statement under assets and liabilities. There were sold during the year stock of the Northern Securities Company to the amount of $2,850,000, par value; preferred stock of the Great Northern Railway Company to the amount of $9,960,089.49, par value; common stock of the Northern Pacific Railway Company to the amount of $14,830,082.15, par value; and stubs of the Northern Securities Company to the
445 amount of $18.71, par value. The amounts realized from the sale of these stocks were credited against the cost of the stocks owned.

Q. Well, now let us understand what that means. You buy—we will say you buy Northern Pacific stock, as you did in this case, and you charge that into your account, so much paid for Northern Pacific stock. Now, when you sell that Northern Pacific stock what kind of entry do you make?

A. Simply credit Northern Pacific stock that amount received on sale.

Q. When the Northern Pacific is all liquidated, you strike a balance between what it cost and what you got and credit that to profit and loss?

A. I do not know.

Q. Is not that your custom?

A. I do not know.

Q. Let me ask you this: You did buy a large amount of Northern Pacific stock which took about the course I stated in my former question. You sold most of that. Your accounts show the amount of money you paid for this stock, and also show the amount you have received up to date by sale of that stock. By taking those two amounts together you could easily make a statement showing the profits you had realized out of the Northern Pacific venture, could you not?

A. So far as it has been sold, yes.

Q. Well, will you be kind enough to make up such a statement and also give the number of shares you still have on hand of the Northern Pacific, the Great Northern and the Northern Securities Company?

Mr. LOVETT. Before that statement is passed, I would like to
446 state that I do not understand that there would be any entry in the books as the basis of a statement of that sort. Mr. Mahl, as I understand, you testified that there has been no credit to profit and loss on that account yet. Of course, they might lose money on the rest—I do not know—but there is no basis in the books, as I understand, for a statement of that sort.

Comr. LANE. Have you had any stock transactions with this company? (Addressing Mr. Severance.) Find out what has been done as to such transactions—if a profit was made and to what account the credit was given.

Q. Let me ask you this: From your own recollection—you remember, don't you—you have already sold more than enough Northern Securities, Great Northern and Northern Pacific to pay back all you paid for the Northern Pacific stock you bought?

A. I do not remember about that, no.

Q. You do not?

A. No.

Q. Will you make up a statement showing the total amount that the Union Pacific or the Oregon Short Line paid for this Northern Pacific stock, and also a statement of the receipts from the Great Northern and Northern Pacific and Northern Securities stocks and also the amount you have on hand? Make it in that way.

The CHAIRMAN. The books will show those items.

Mr. SEVERANCE. Yes, he can pick it out and make it into a statement.

Comr. LANE. Have you made a profit on any of the stocks which you have bought and sold?

WITNESS. We do not know until the transaction is closed.

447 Comr. LANE. Has any transaction been closed?

WITNESS. None of these; they are all open yet.

Comr. LANE. Has any stock transaction been closed?

WITNESS. You mean of these three stocks?

Comr. LANE. No. I mean any stocks you have bought and sold.

WITNESS. Possibly there has.

Comr. LANE. Don't you recall that you have had some transactions by which you have bought stocks and sold them again and a profit has been realized?

WITNESS. I do not recall now. If there has, it has been a small amount.

Comr. LANE. You do not recall that there has been any transaction of that kind?

WITNESS. I do not.

Comr. LANE. And the basis for the answer, as I understand it, is that some of the stock is still held.

WITNESS. Yes, sir.

Comr. LANE. And when any of the stock is still held you do not credit anything to profit?

WITNESS. That varies.

Comr. LANE. How does it vary?

WITNESS. It depends on what stocks they are. We might have a small amount of stock and it would be closed at a profit, but as in cases like the Northern Pacific stock and the Great Northern the transaction is not complete.

Comr. LANE. Is there a separate rule in the corporation as to where profits of such kind shall be credited, or is that
448 subject to direction?

WITNESS. I think that is always subject to the order of the board of directors.

Comr. LANE. That is the thing I was getting at some time ago. When you take the money of the Union Pacific and you buy stock with it, and you make a profit with it upon the transaction, then you regard the profit as subject to the direction of the board of directors and you can not recall that you have had a transaction of that kind this year?

WITNESS. Not that I have any knowledge of.

Q. Now, so that we may know exactly what we are getting at here, I will ask you to prepare a statement which will show, first, the Northern Pacific stocks purchased. They were bought, were they not, by the Union Pacific, and afterward turned over to the Short Line—you know the purchase I mean, the large block of stock in 1901. Put that down on one side of the sheet. On the other put down the total receipts from the sale of Northern Securities, Great Northern and Northern Pacific stocks; then put on that sheet the amount of Great Northern and Northern Pacific stock you still hold, and perhaps we will be able to work it out from the market values of those stocks how you have come out, or approximately so.

A. Bear in mind that many of those transactions occurred before my time.

Q. Is it all on your books?

A. Yes, but I am not familiar with them.

Q. I am not asking you out of your own head, but from your books. Bring it down to to-day.

A. Yes.

449 (A recess was here taken until 2 o'clock p. m.)

Q. I show you an exhibit marked "5–Mahl." Was that made up by you, Mr. Mahl?

A. Under my direction.

Q. It is a correct statement of what it purports to show, is it not?

A. Yes, sir.

Q. (Referring to Exhibit No. 5.) This is "Oregon Railroad and Navigation Company; statement showing holdings of Portland & Asiatic Steamship Company stock;" 993 shares in the name of E. H. Harriman, chairman, and 1 share each in the names of W. W. Cotton,

William Crooks, W. D. Cornish, R. P. Schwerin, H. D. Conner, R. S. Lovett, W. R. Litzenberg, making a thousand shares in all.

Comr. LANE. Those are the individuals?

Mr. SEVERANCE. Yes, sir, 993 shares in the name of Mr. Harriman as chairman. That thousand shares of stock in the Portland & Asiatic Steamship Company all belongs to the Oregon Railroad & Navigation Company?

WITNESS. Yes, sir.

Q. I now show you exhibit marked "6–Mahl," consisting of two sheets. Was that prepared under your direction?

A. It was.

Q. And is a correct statement of what it purports to show?

A. It is.

Mr. SEVERANCE. This is a statement (Referring to Exhibit No. 6.) which shows the names of the persons in whom there is registered the Southern Pacific common stock and Southern Pacific preferred stock that belongs to the Oregon Short Line Railroad Company? Is that true?

450 WITNESS. That is right.

Q. Aggregating 900,000 shares of common and 180,000 shares of preferred?

A. That is correct.

Papers marked Complainant's Exhibits 58 and 59 (Mahl), the same having been Exhibits 5 and 6 Mahl, respectively, in Interstate Commerce Commission record.

Mr. EVARTS. It is stipulated that they are true copies.

Mr. SEVERANCE. I offer in evidence Complainant's Exhibits 58 and 59 (Mahl).

Complainant's Exhibit 58 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 58. (Mahl).

OREGON RAILROAD & NAVIGATION CO.

Statement showing holdings of Portland & Asiatic S. S. Co. stock.

993	shares	in	name	E. H. Harriman, Chairman,
1	"	"	"	W. W. Cotton,
1	"	"	"	Wm. Crooks,
1	"	"	"	W. D. Cornish,
1	"	"	"	R. P. Schwerin,
1	"	"	"	H. F. Conner,
1	"	"	"	R. S. Lovett,
1	"	"	"	W. R. Litzenberg.
Total—1000	shares			

Wm. Mahl.

JANUARY 5, 1907.

451 Complainant's Exhibit 59 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 59. (Mahl.)

OREGON SHORT LINE RAILROAD CO.

Statement showing holdings of Southern Pacific Co. Common stock.

100	shares	in	name	of J. P. Adams,
100	"	"	"	" T. Jefferson Coolidge, Jr.,
100	"	"	"	" Geo. J. Gould,
400	"	"	"	" C. D. Haines,
5,000	"	"	"	" J. J. Hanauer,
756,950	"	"	"	" E. H. Harriman,
20	"	"	"	" Siegfried Haymann,
100	"	"	"	" James H. Hyde,
100	"	"	"	" O. H. Kahn,
111,430	"	"	"	" Kuhn, Loeb & Co.,
100	"	"	"	" Winslow S. Pierce,
100	"	"	"	" Jacob H. Schiff,
9,600	"	"	"	" S. Siegman,
100	"	"	"	" Rich. E. Pestel,
15,700	"	"	"	" E. S. Steinan,
100	"	"	"	" James Stillman.
900,000	shares			

Wm. Mahl.

JANUARY 5, 1907.

OREGON SHORT LINE RAILROAD CO.

452 *Statement showing holdings of Southern Pacific Co. preferred stock.*

180,000 shares in name of E. H. Harriman.

Wm. Mahl.

JANUARY 5, 1907.

Q. Now, it is a fact, is it not, that all this stock is under a mortgage of the Oregon Short Line?

A. It is.

Q. What company is the trustee under that mortgage?

A. The Equitable Trust Company.

Q. Can you state by reference to your report there what the date of the deposit of that stock was?

A. They were deposited shortly after the mortgage was dated—within a few months, undoubtedly.

Q. Is the holding of the Oregon Short Line of 180,000 shares of preferred stock also under that mortgage?

A. It is.

Q. When was that deposited?

A. About the same time.

Q. How many bonds were issued against that deposited stock?

A. One hundred million were issued against the stocks now referred to and other stocks.

Q. The one hundred million of stock was Oregon Short Line stock?

A. Bonds.

Q. What were the other stocks put under that mortgage aside from the Southern Pacific stock?

A. (Referring to papers.) $2,564,000, face value, Oregon Short Line Railroad Company, Income A, 5% bonds; $23,907,300 Oregon Railroad & Navigation Company common stock; $10,866,800 Oregon Railroad & Navigation Company preferred stock.

453 Q. That is all, is it?

A. Yes, and the Southern Pacific stock referred to.

Q. Now, Mr. Mahl, when were the One Hundred million dollars of bonds that are secured by the Southern Pacific stock and the other stocks and bonds you mentioned issued and sold?

A. I cannot give you the dates. I can furnish the dates. I do not recall them now.

Q. Was the whole issue put out?

A. The whole issue was put out and sold.

Q. Can you tell what was done with the proceeds of that large bond issue?

A. I believe that part of that was used to retire the $82,000,000 of participating bonds that were outstanding.

Q. I show you, Mr. Mahl, Exhibit No. 7. Was that made up under your direction?

A. It was.

Q. That is a correct statement of what it purports to show?

A. Yes, sir.

Q. And is taken from other items picked out of your last annual report?

A. Yes, sir.

Paper marked Complainant's Exhibit (60) Mahl, which was Mahl Exhibit 7 in Interstate Commerce Commission record, Jan. 5, 1907.

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 60 (Mahl) is a correct copy of the exhibit marked Mahl No. 7 introduced before the Interstate Commerce Commission January 5, 1907, just referred to in testimony, and I offer the same in evidence.

Complainant's Exhibit 60 (Mahl) is as follows:

454 COMPLAINANT'S EXHIBIT 60. (Mahl.)

UNION PACIFIC RAILROAD COMPANY.

Annual Report, Year Ending June 30, 1906.

Credit to Profit and Loss, June 30, 1906	$42,796,026.39
Credit to Profit and Loss, June 30, 1905	34,943,194.42
Gain during the year	$7,852,831.97

Distributed as follows:		
Expended for extensions		$506,903.56
Expended for betterments and additions (after deducting amount appropriated from income and proceeds of lands and other property sold which was applied to betterments and additions)		1,593,224.30
Increase in assets		8,861,239.02
		$10,961,366.88
Deductions:		
Increase in capital	$2,174,836.00	
Increase in contingent liabilities	933,698.91	
		3,108,534.91
		$7,852,831.97

JANUARY 5, 1907.

WM. MAHL.

Q. Now, Mr. Mahl, this statement shows that on the 30th of June, 1905, the credits to profit and loss of the Union Pacific Railroad Company was $34,943,194.42, and that same item on the 30th of June, 1906, one year later, was $42,796,026.39, or a gain during the
455 year of $7,852,831.97. Now, out of what kind of items are those credits made up?

A. I think they are mentioned there in your statement.

Q. Well, I understand an increase is shown here.

A. Yes, sir.

Q. But what I want to get at is this: does this credit to profit and loss—that is the surplus account?

A. That is the gain between the two years.

Q. This is called "credit to profit and loss." That shows a surplus of $42,000,000?

A. Yes, sir.

Q. That is what you call "operating surplus?" what was called yesterday "operating surplus?"

A. Not altogether. A profit and loss balance takes in all transactions of every kind and character.

Q. Let me see if it does. This does not take in any profits you make by buying and selling stocks and securities?

A. Not in this instance.

Q. That is what I mean.

A. No.

Q. So that this surplus, or the increase in the surplus during the year, of $7,852,831, was made up in this way, wasn't it: first, you took your gross receipts from traffic, and you substracted from that the operating expenses and struck the balance; you took out of that your dividends and your interest and rentals and other things of that kind; then you added the result so obtained your income by way of interest on investments or dividends on stock investments, and in that way you got this increase in surplus? Isn't that true?

A. Not entirely.

Q. Just state how you did do it.

A. For instance, we received during the year $1,463,000 for
456 the sale of lands.

Q. That went in?

A. Which, under the various provisions of the mortgage, we were required to again apply in the purchase of other lands; but, on the other hand, we expended, mind you, on these betterments and additions, $6,263,000. Now, this money which we apply here, we really used that to write off our betterment account. A part of the betterment account which is not written off in that way comes out of the earnings, and increases the profit and loss; and in that seven million dollars there is a certain sum of money for betterments, and I think that is shown on that statement.

Q. This statement shows, "Expended for extensions, $506,903.56. Expended for betterments and additions (after deducting amount appropriated for income and proceeds of lands and other properties sold, which was applied to betterments and additions), $1,593,224.30. Increase in assets, $8,861,239.02. Total, $10,961,366.88;" and from that you decrease—that sum would decrease by an increase in capital of $2,174,836 and an increase in contingent liabilities of $933,698.91, leaving a net balance that I have stated, a gain during the year?

A. Yes, sir.

Q. That did not include any profits whatever that you made in handling securities, did it; that is, buying and selling?

A. No, there was none charged at all.

Q. Now I show you Exhibit No. 8. I will ask you if this is the statement submitted to the board of directors of the Union Pacific at their meeting on August 15, 1906, at the time they voted the dividend of 5 per cent?

A. Yes, sir.

457 Q. That was prepared under your direction?

A. That is a copy of it.

Paper marked Complainant's Exhibit 61.

Mr. SEVERANCE: Complainant's Exhibit 61 (Mahl) is admitted to be a copy of a document entitled "Mahl Exhibit No. 8," introduced into the record of the Interstate Commerce Commission January 5, 1907, and I now offer the same in evidence.

Complainant's Exhibit 61 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 61. (Mahl.)

STATEMENT SUBMITTED TO THE BOARD OF DIRECTORS OF THE UNION PACIFIC RAILROAD CO. AT THEIR MEETING AUGUST 15, 1906.

UNION PACIFIC SYSTEM.

Estimated Income for the 12 Months Ending June 30, 1906.

	1906	1905	
Gross receipts	$67,281,542.60	$59,324,948.66	—$7,956,593.94
Operating expenses	35,261,170.84	28,252,702.04	— 7,008,468.80
Net	$32,020,371.76	$31,072,246.62	— $948,125.14
Taxes	$1,702,602.32	1,492,012.39	— 210,589.93
Surplus	$30,317,769.44	$29,580,234.23	— $737,535.21
Surplus as above			$30,317,769.44

Receipts from rentals and from other sources in excess of miscellaneous expenses	$7,767,491.42
Total	$38,085,260.86
Less: Fixed charges, including rentals	8,883,416.03
Surplus, after payment of fixed charges	$29,201,844.83
Four per cent. dividend on preferred stock	3,982,032.00
Balance	$25,219,812.83

458 $6,657,305.36 Expended for Betterments and Additions.
17,230,919.40 Expenditures for construction of new lines and for equipment, for 12 months ending June 30, 1906, dealt with as a free asset (estimated).

There is charged in the above expenses and taxes and credited to the reserve fund for betterments, equipment and general extraordinary repairs, subject to the action of the Board of Directors the sum of $2,206,610.39.

Wm. Mahl.

January 5, 1907.

Q. Now, Mr. Mahl, this statement shows that your gross receipts in 1906 were $67,281,542.60, an increase of $7,956,593.94 over the preceding year. Your operating expenses were $35,261,170.84, or an increase of $7,008,468.80, leaving a net profit in 1906 of $32,020,371.76; out of which you took your taxes, leaving a surplus for the year of $30,317,769.44. Now that is surplus arising from operation, isn't it?

A. Yes, sir.

Q. Traffic?

A. Yes, sir.

Q. And that does not include any money you have received from handling securities, does it?

A. Investments and interest.

Q. What?

A. Is the interest on investments stated in there?

Q. But that is afterwards. That is receipts from traffic over and above operating expenses and taxes?

A. Yes, sir.

459 Q. That is, you had applicable to dividends and bond interest solely from your business, as a railroad company, aside from your business, as an investment company, thirty millions and a fraction over as the proceeds of the year's business ended June 30, 1906?

A. That is right.

Q. Now, you also received from rentals and other sources $7,767,491.42, didn't you?

A. Yes, sir.

Q. Does that include the interest on bonds that you own and dividends on stock that you own?

A. Yes, sir. It is stated here in that report.

Q. Now that made an aggregate income of $38,085,260.86. Now, the next item in this statement is, "Less fixed charges, including rentals, $8,883,416.03." Now, these fixed charges include the interest on your outstanding bonds?

A. Yes, sir.

Q. And any rentals that you have to pay?

A. Yes, sir.

Q. So that you have left a net surplus of $29,201,844.83 applicable to dividends on your stock?

A. Yes, sir.

Q. Without including any income whatever from the profits you may have made by buying securities at one price and selling them at a higher price?

A. That is correct.

Q. Now, the next item is "4 per cent dividend on preferred stock, $3,982,032," and that leaves a balance of $25,219,812.83 applicable to dividends on your common stock?

A. That is right.

Q. Your common stock outstanding amounts to about $195,000,000, doesn't it?

A. Yes, sir.

Q. Is that right?

A. A little over.

Q. It is not a million over?

A. No, sir.

Q. And that would, putting it on a 10 per cent basis, take
460 $19,500,000 to pay the dividend for the year, would it not?

A. Yes, sir.

Q. That would leave you, assuming that your business for 1906 and 1907, up to June 30, 1907, is no greater than up to June 30, 1906, about six million dollars over and above paying this 10 per cent dividend, without counting in any profits that the Union Pacific would have made by buying securities or bonds or stocks at one price and selling them at a higher price?

Mr. LOVETT. And without including the dividends on Southern Pacific stock?

WITNESS. I was just going to call attention to that. This statement when it was made up did not include the dividends which we received, of $2,250,000 on the Southern Pacific common stock.

Q. That is, the dividends you are to receive beginning last July?

A. That were received last July.

Q. And that dividend is not shown?

A. No; at that time it had not been declared.

Q. But you are able to earn from the sources that have been detailed here, have you, the amounts that I have stated without including any profits from these stock investments?

A. Yes, sir.

Q. Now, Mr. Mahl, I see on the bottom of this statement a memorandum of $6,657,305.36, expended for betterments and additions.

Out of what funds were those expended and what were they charged to?

A. They were expended out of current funds, or any moneys
461 that came in; those were expenditures, really, of what you might call a capital account. They were simply put there as a memorandum to show what has been expended on capital account.

Q. You mean that that was expended out of capital account already acquired by the sale of securities, or out of capital account to be hereinafter reimbursed out of the sale of additional securities?

A. I cannot tell. We are going right along spending money for betterments and additions, and we take it from any of those which are in the treasury.

Q. You would even take it from the profits on stock if you happen to have it on hand?

A. Take it from any fund we might happen to have.

Q. The next item in this memorandum is $17,230,940 expenditures for construction of new lines and equipment for twelve months ending June 30, 1906, dealt with as a free asset, estimated. Now, will you state what that expression means—"dealt with as a free asset?"

A. Property against which no securities of any kind have been issued.

Q. That is, no securities specifically issued against that property, but you don't know but what there still remain in your treasury money realized from the sale of securities heretofore put out by your company which will be sufficient to cover that?

A. That would not be taken in.

Q. Then, this is in the nature of a suspense account to be hereafter dealt with?

A. Yes, securities issued against it.

Q. Here is another memorandum. There is charged in the above expenses and taxes carried to the reserve fund for better-
462 ments, equipment and general extraordinary affairs subject to the action of the board of directors, the sum of $2,206,610.39. Now, that amount of $2,200,000 is included in the $35,000,000 of operating expenses, isn't it?

A. Yes, sir.

Q. So that you have, in figuring up the operating expenses to be set over against your gross receipts, included an item of $2,200,000, that may properly be charged to capital account except that you deemed it wise to absorb that much as part of operation?

A. No.

Q. Will you explain what that item means?

A. That money has not been expended but has been charged against the year's income, and a fund created, against which hereafter any extraordinary expenses, such as washouts, damages, etc., which would ordinarily have to be charged to operating expenses will be charged against that reserve.

Q. If that is the case, why do you say betterments and extraordinary affairs?

A. Yes; it might be used for that.

Q. Consequently your operating expenses for the year are $2,206,000 really less than shown in the aggregate of $35,000,000, because you have taken out from your receipts this $2,200,000 extra money and put it in a reserve fund to be used in the future?

A. Yes, sir.

Comr. LANE. Is that the beginning of that, or have you had such a fund before?

WITNESS. We have had such a fund before.

Q. What is the amount of it all together?

A. Something like $4,000,000.

Q. Can you make up a statement of that account showing
463 the amounts that were put into it, and the charges against it?

A. There have been no charges against it.

Mr. KELLOGG. He has got the amount right there.

WITNESS. $4,474,610.39, to the good of that account at the close of the year.

Q. And up to this time there have been no charges against it whatever?

Comr. LANE. Is that in the treasury of the company?

WITNESS. It is more in the nature of a book account; the money is there in the common treasury.

Comr. LANE. All of the funds went into the treasury and you draw on them indiscriminately, and you keep these common accounts as matter of segregation?

WITNESS. Yes, sir.

Mr. KELLOGG. Did you make up Exhibit No. 3 (the same being Complainant's Exhibit 2 (Millar) or is that made up by the secretary?

WITNESS. Made up by the secretary.

Mr. KELLOGG. Your books show, do they not, the amount of Southern Pacific stock owned by the Oregon Short Line Company from and after its acquisition, or the commencement of its acquisition of Southern Pacific stock, at all times?

WITNESS. Yes, sir.

Mr. KELLOGG. Can you state from memory how much Southern Pacific stock the Short Line owned during the entire years of 1903 and 1904 and since?

WITNESS. No.

Mr. KELLOGG. You can not state?

464 WITNESS. No. I can state how much they owned June 30, 1906.

Mr. KELLOGG. Well, June 30, 1906, they owned $108,000,000, didn't they, of the Southern Pacific stock—$90,000,000 and $18,000,000—common and preferred, I mean?

WITNESS. That is correct.

Mr. KELLOGG. Have you got the annual report so that you can tell me the amount the Short Line owned at all times?

WITNESS. No; I can only show it to June 30th. I can show it at the end of each year.

Mr. LOVETT. Mr. Kellogg, we can have a statement made out at any particular day. Do you want the date of the annual meeting?

Mr. KELLOGG. This statement shows this, Mr. Lovett: That the Oregon Short Line Company voted 900,000 shares of stock at a meeting, at an adjourned meeting of the Southern Pacific Company held on April 8, 1903; the books closed on April 3rd, 1903, and I would like to know the amount of stock that the Short Line Company did actually own in the Southern Pacific Company on April 8, 1903, and April 3rd, 1903, and at all times thereafter until December 1st, 1903.

WITNESS. I can furnish that from the books.

Mr. LOVETT. Your books will show that?

WITNESS. They show that.

Mr. KELLOGG. And I suppose after that time the amount has not been changed?

Mr. LOVETT. Except by the preferred stock.

Mr. KELLOGG. Now, do you recollect a transaction that
465 is shown in the minute book of the Short Line Company, the sale of 300,000 shares of Southern Pacific stock to William Rockefeller on March 31, 1903?

WITNESS. I do not now recollect it.

Mr. KELLOGG. You have no recollection of it whatever?

WITNESS. No.

(And the following from the record of Interstate Commerce Commission testimony taken in New York February 25–28, 1907:)

By Mr. KELLOGG:

Q. I show you Mahl Exhibit 1 (I. C. C. testimony, New York, February 28, 1907), which is the statement of purchase and sale of the Northern Securities Company's stock and the substituted stock, Northern Pacific and Great Northern stock; is that correct?

A. It is.

Q. That is made up from your books?

A. Yes.

Paper marked Complainant's Exhibit 62 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 62 is a correct copy of said Exhibit 1 in Interstate Commerce Commission record of February 28, 1907, and the same is offered in evidence.

Complainant's Exhibit 62 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 62. (Mahl.)

Northern Securities Co. stock.

824,918.71 shares, cost		$79,459,691.36
100,000.00 " , sold for		16,880,049.46
724,918.71 Balance, exchanged for:		
216,520.8949 shares	Great Northern	
281,828.8215 "	Northern Pacific	
7,249.1871 "	Northern Securities stubs.	

466 *Northern Pacific stock.*

281,828.8215	shares	received in exchange for Northern Securities stock.	
240,300.8215	"	sold for	$50,166,357.97
41,528	"	unsold.	

Great Northern stock.

216,520.8949	shares	received in exchange for Northern Securities stock.	
37,444	"	acquired under rights, costing	$3,744,400.00
253,964.8949	Total.		
163,600.8949	shares	sold for	$49,801,576.47
90,364	"	unsold.	

Northern Securities stubs.

7,249.1871	shares	received in exchange for Northern Securities stock.	
.1871	"	sold for	$56.13
7,249.	"	unsold.	

Great Northern ore certificates.

90,364. shares received on account of Great Northern stock.

FEBRUARY 15, 1907. WM. MAHL.

467 Q. I show you Mahl Exhibit 2, which is a statement of the purchase of the Northern Pacific by the Oregon Short Line, headed, "Northern Pacific purchase money certificate," showing the face value of purchase money certificates, and the balance furnished in cash by the Oregon Short Line; is that correct?

A. It is.

Paper marked Complainant's Exhibit 63 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 63 (Mahl) is a copy of Mahl Exhibit 2 in the record of the Interstate Commerce Commission of February 28, 1907, and I offer the same in evidence.

Complainant's Exhibit 63 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 63. (Mahl.)

OREGON SHORT LINE R. R. CO.

Northern Pacific Purchase Money Certificates.

Under an agreement dated May 28, 1901, the Union Pacific R. R. Co. sold to the Oregon Short Line R. R. Co. $37,023,000 face value Northern Pacific Ry. Co. common and $41,085,000 face value Northern Pacific Ry. Co. preferred stock for the sum of $88,334,545.01. The Union Pacific R. R. Co. was to receive in payment therefor:

$61,000,000 face value Northern Pacific Purchase Money Certificates bearing interest at rate of 4% per annum, from July 1, 1901; $27,334,545.01 in cash.

In June, 1901, the Oregon Short Line R. R. Co. assumed, in payment of the above cash indebtedness, loans to the amount of
468 $27,500,000 which had been made by the Union Pacific R. R. Co. for account of the purchase of these stocks. The difference between the amount of cash to be paid and the amount of loans assumed was credited by the Union Pacific to the Oregon Short Line in its account.

WM. MAHL.

FEBRUARY 23, 1907.

Q. I show you Exhibit 3, which is a copy of a resolution of the board of directors of the Union Pacific Railroad Company, dated January 31, 1901, provision for financial requirements, which is certified by Mr. Alex Millar; you admit that is correct?

Mr. LOVETT. Yes.

Paper marked Complainant's Exhibit 64 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 64 is a correct copy of Mahl's Exhibit 3 in the record of the Interstate Commerce Commission February 28, 1907, and the same is offered in evidence.

Complainant's Exhibit 64 is as follows:

COMPLAINANT'S EXHIBIT 64. (Mahl.)

UNION PACIFIC RAILROAD COMPANY.

BOARD OF DIRECTORS, *January 31, 1901.*

PROVISION FOR FINANCIAL REQUIREMENTS.

The general subject of making financial provision for con-
469 templated acquisitions of securities of other companies, and for branches and extensions of this Company's system, and the subject of protecting the properties of the separate companies embraced in the system and of unifying the operation of the several lines constituting the system, were considered and discussed at length, and, upon motion duly made and seconded, it was

Resolved: 1. That reference be and it is hereby made to the Executive Committee, with full power, of the subject of making immediate provision for present and future financial requirements of the Company, including provisions for financing acquisitions, now or hereafter contemplated in the interest of this Company, of securities of any other company or companies, and including full power to conduct and provide for all measures, proceedings, and actions to carry out such acquisitions, and among the measures which may be so taken for said purpose, or for any of the purposes expressed, in these resolutions, the Executive Committee is hereby authorized to provide for the issue and negotiation of bonds and obligations of this Company, in an amount not exceeding $100,000,000. Said Com-

mittee may determine the terms and period, or periods, of said bonds and the rate of interest, not to exceed four per cent which the same shall bear; and for the purpose of securing the payment of the principal and interest of said bonds, as the same shall mature, the Executive Committee may authorize the making, execution and delivery by this Company of the mortgage, deed of trust or pledge, upon such terms, conditions, and trusts as said Committee may determine,
470 of lines of railroad, franchises, stocks, bonds, assets and properties of any kind belonging or which may belong to this Company.

2. That any such new bonds which may be issued by this Company may be made convertible at any time, at the option of the holders, into the common stock of this Company, and the Executive Committee may take any and all steps necessary or considered by it proper to provide for such increase of the authorized issue of this Company's common stock as will enable such conversion of all such new bonds as may be authorized from issue and negotiation by this Company.

3. That, pending such final and complete action as may be determined by the Executive Committee and taken by this Company in the premises, temporary provision for any of the purposes herein expressed may be made by the Chairman of the Executive Committee, in the name and on behalf of this Company, through the issue of any obligations or certificates of indebtedness of this Company, or by the sale or by the pledge or other temporary disposition of such property and assets of this Company as may in his judgment be required for such purposes.

4. That all matters touching the financial and operating relations between this Company and any and all other companies of the system are hereby referred to the Executive Committee, with full power; and said Committee is hereby authorized to provide in its discretion for settlement of accounts between said companies and the acquisition of any property and any assets of any other of said companies, and for any lease or operating agreements, and for any control or use of the properties and assets of said other companies that said Committee may deem advisable, and upon such terms, conditions, and guarantees as said Committee may determine or approve.

471 Q. I show you Mahl Exhibit No. 4, which is the proceedings of the executive committee of March 19, 1903, of the Union Pacific, showing the loans, amounts loaned and amounts borrowed; is that correct?

A. It is.

Mr. LOVETT. It may be admitted.

Paper marked Complainant's Exhibit 65 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 65 is a correct copy of Mahl's Exhibit 4, just referred to, in the record of Interstate Commerce Commission testimony, February 28, 1907, and I offer the same in evidence.

Complainant's Exhibit 65 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 65. (Mahl)

UNION PACIFIC RAILROAD COMPANY,
Executive Committee, March 19, 1903.

AMOUNTS LOANED AND AMOUNTS BORROWED.

The Chairman submitted a memorandum showing the amounts borrowed by the Company, and also the amounts loaned by the Company to the Southern Pacific Company, the Chicago & Alton Railway Company, the Kansas City Southern Railway Company, and the Union Depot & Railway Company of Denver;

Whereupon, on motion duly seconded, the amounts borrowed and also the loans made by the Company were approved, and the action of the Chairman in arranging for the same was ratified and confirmed.

Loans.

Due to National City Bank	$2,000,000.00
Due to Other Banks	3,750,000.00
Total	$5,750,000.00

Cash requirements.

Estimated payments for operating office for remainder of month	$233,500.00
Unpaid interest and dividend requirements	127,900.00
Total	$361,400.00

Cash available.

Cash in Bank	$68,655.93
Estimated remittances for balance of March	321,000.00
Total	$389,655.93

General.

The Union Pacific has advanced to the Southern Pacific Company	$9,000,000.00
Chicago & Alton	250,000.00
Kansas City Southern	430,000.00
Denver Union Depot Co. for redemption of bonds	300,000.00
Total	$9,980,000.00

NEW YORK, *March 18, 1903.*

WM. MAHL.

Q. I show you Mahl Exhibit No. 5, which is a statement of the dates and amounts received from sale of the Union Pacific
473 convertible, 4 per cent gold bonds; is that correct?

A. It is.

Paper marked Complainant's Exhibit 66 (Mahl).

Mr. SEVERANCE. It is stipulated that Complainant's Exhibit 66 (Mahl) is a correct copy of Mahl Exhibit No. 5 of the record of the Interstate Commerce Commission February 28, 1907, and the same is offered in evidence.

Complainant's Exhibit 66 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 66. (Mahl.)

UNION PACIFIC R. R. CO. FIRST LIEN CONVERTIBLE FOUR PER CENT. GOLD BONDS.

(Mortgage dated April 15, 1901.)

STATEMENT SHOWING DATES AND AMOUNTS RECEIVED FROM SALE OF BONDS.

Bonds sold to subscribers, for the purpose of providing for the payment for shares of stock of the Southern Pacific Company purchased, as per advertisement of February 13, 1901:

Month of March, 1901.

1	$17,500
2	7,500
4	16,250
5	23,750
6	55,750
7	98,000
8	54,500
9	63,250
11	81,000
12	64,000
13	78,000
14	179,250
15	115,250
16	198,000
18	567,750
19	1,616,250
20	8,272,500
21	384,250
22	55,250
23	7,500
25	500
26	10,250
27	1,500
28	1,500
29	6,000
30	19,500
Total, March	$11,994,750

Month of April, 1901.

1	$20,000
2	52,500
3	1,126,500
4	38,500
5	35,000
6	23,500
8	150,500
9	663,750
10	8,024,000
11	196,750
12	129,250
13	26,250
15	22,250
16	73,500
17	14,250

18	$20,000
19	12,250
20	5,750
22	16,250
23	98,750
24	18,000
25	15,000
26	15,250
27	1,750
29	8,500
30	27,750
Total, April	$10,825,750

Month of May, 1901.

1	$5,250
2	38,250
3	4,250
4	6,500
6	2,750
7	9,500
8	12,750
9	9,000
10	22,250
11	3,250
13	222,250
14	38,000
15	65,000
16	147,250
17	337,500
18	716,500
20	7,143,500
21	89,250
22	43,250
23	19,500
24	2,250
25	13,500
27	24,750
28	9,250
29	12,750
31	2,000
Total, May	$9,000,250

Month of June, 1901.

1	$1,000
3	26,000
4	18,750
5	155,500
6	147,250
7	445,250
8	208,750
10	6,904,000
11	98,500
12	16,750
13	6,750
14	29,000
17	12,750
18	500
19	3,750
20	2,250
21	1,000
26	250
Total, June	$8,168,000

On July 26, 1901	500	
On September 12, 1901	750	
Total bonds sold to subscribers		$40,000,000
Bonds sold to Kuhn, Loeb & Co.:		
April 24, 1901	$35,000,000	
" 30, 1901	25,000,000	
Total bonds sold to Kuhn, Loeb & Co		$60,000,000
Total		$100,000,000

JANUARY 5, 1907.

WM. MAHL.

Q. I show you Exhibit No. 6, which is a condensed statement of the operations of the Union Pacific for five months ending
478 November 30, 1901, marked Mahl Exhibit No. 6; is that correct?

A. It is a long time since I have seen it, but if my name is to it, it is correct.

Paper marked Complainant's Exhibit 67 (Mahl).

Mr. SEVERANCE. It is agreed that Complainant's Exhibit 67 (Mahl) is a correct copy of Mahl Exhibit No. 6 shown in the record of the Interstate Commerce Commission under date of February 28, 1907, and the same is offered in evidence.

Complainant's Exhibit 67 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 67. (Mahl.)

UNION PACIFIC SYSTEM.

Condensed statement of operations, five months ending November 30, 1901.

Average miles of road operated		5,739.09
Gross transportation receipts		$21,548,858.85
Operating expenses and taxes		10,890,118.73
Receipts over operating expenses and taxes		$10,658,740.12
Income from investments		2,910,540.60
Total income		$13,569,280.72
Fixed charges		5,790,306.75
Balance, surplus		$7,778,973.97

NEW YORK, *January 9, 1902.*

WM. MAHL.

479 Q. Mahl Exhibit No. 7, which is a statement of the stocks deposited on March 9, 1905, with the Equitable Trust Company under the collateral trust mortgage of the Oregon Short Line Railway Company; is that correct?

A. That is correct.

Paper marked Complainant's Exhibit 68 (Mahl).

Mr. SEVERANCE. It is agreed that Complainant's Exhibit 68 is a correct copy of Mahl's Exhibit No. 7 in the Interstate Commerce

Commission Record, Feb. 28, 1907, and I offer Complainant's Exhibit 68 in evidence.

Complainant's Exhibit 68 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 68. (Mahl.)

OREGON SHORT LINE R. R. CO. FOUR PER CENT. REFUNDING TWENTY-FIVE YEAR GOLD BONDS.

Statement of stocks deposited on March 9, 1905, with Equitable Trust Co., Trustee, as collateral under Oregon Short Line Railroad Company's Four Per Cent Refunding Twenty-five year gold bonds.

900,000 shares Southern Pacific Company Common Stock,
180,000 shares Southern Pacific Company Preferred Stock,
200,000 shares Oregon Railroad & Navigation Co. Common Stock,
100,000 shares Oregon Railroad & Navigation Co. Preferred Stock,
50,000 shares Northern Securities Company Capital Stock.

JANUARY 5, 1907.

WM. MAHL.

480 Q. I show you Exhibit No. 8, which is a condensed statement of operations of the Oregon Short Line from July 1st, 1897, to June 30, 1906, marked Mahl Exhibit 8. Is that correct?

A. Yes.

Paper marked Complainant's Exhibit 69 (Mahl).

Mr. SEVERANCE. It is agreed that Complainant's Exhibit 69 (Mahl) is a correct copy of Mahl's Exhibit No. 8 in the record of the Interstate Commerce Commission of February 28, 1907, and I offer the same in evidence.

Complainant's Exhibit 69 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 69. (Mahl.)

OREGON SHORT LINE RAILROAD CO.

Condensed Statement of Operations from July 1, 1897, to June 30, 1906.

Gross transportation receipts	$94,675,501.21
Operating expenses and taxes	44,700,006.12
Receipts over operating expenses and taxes	$49,975,495.09
Income from investments	25,965,301.45
Total income	$75,940,796.54
Fixed charges	49,989,301.36
Surplus	$25,951,495.18
Appropriation from income	11,235,106.17
Surplus	$14,716,389.01
Dividend	13,675,350.00
Balance—Surplus	$1,041,039.01

FEBRUARY 8, 1907.

WM. MAHL.

481 Q. I show you Exhibit No. 9, which is a statement showing the issuance and sale of the 4 per cent and participating bonds of the Oregon Short Line Railway Company. That is correct?

A. Yes.

Paper marked Complainant's Exhibit 70 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 70 (Mahl) is a correct copy of Mahl's Exhibit No. 9 in the record of the Interstate Commerce Commission, February 28, 1907, and I offer the same in evidence.

Complainant's Exhibit 70 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 70. (Mahl.)

OREGON SHORT LINE RAILROAD CO.

Statement showing Issue and Sale of Four Per Cent. and Participating Bonds.

$82,491,000 face value, issued as of July 17, 1902.			
July 18, 1902.	$31,000,000	face value sold to subscribers under circular of this date for	$27,900,000
Jan. 23, 1903.	5,000,000	face value sold to Kuhn, Loeb & Co. for	4,500,000
June 8, 1904.	500,000	face value sold to Kuhn, Loeb & Co. for	474,375
June 22, 1905.	45,991,000	face value exchanged for a like amount of Oregon Short Line R. R. Co. Four per cent. Refunding Bonds.	
	$82,491,000	Total	

FEBRUARY 8, 1907.

W. M. MAHL.

482 Q. I show you Exhibit No. 10, which is a statement showing the sale of the 4 per cent refunding bonds of the Oregon Short Line Railway Company. Is that correct?

A. Yes.

Paper marked Complainant's Exhibit 71 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 71 is a correct copy of Mahl's Exhibit No. 10 in the record of the Interstate Commerce Commission February 28, 1907, and I offer the same in evidence.

Complainant's Exhibit 71 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 71. (Mahl.)

OREGON SHORT LINE RAILROAD CO.

Statement showing Sale of Four Per Cent Refunding Bonds.

Jan. 31, 1905.	$40,000,000	face value sold to Kuhn, Loeb & Co. for	$38,400,000
June 22, "	45,991,000	face value sold to Union Pacific R. R. Co. in exchange for a like amount of four per cent and Participating Bonds	45,991,000
" 23, "	14,009,000	face value sold to Union Pacific R. R Co. for	13,168,460
	$100,000,000	Total	$97,559,460

$5,000,000 face value of the bonds sold to the Union Pacific R. R. Co. were subsequently sold by them to Kuhn, Loeb & Co. for $4,785,625. The remaining $55,000,000 face value of bonds are in the Treasury of the Union Pacific R. R. Co.

FEBRUARY 8, 1907. WM. MAHL.

483 Q. And Exhibit No. 11, showing operating surplus at the time the $100,000,000 stock issue was authorized showing resources from February 28, 1901 (when stock issue was authorized) down to June 30, 1901, and how applied. This is a statement of the Union Pacific Railway Company marked W. D. C. No. 2 in the corner?

A. Yes.

Q. That is correct?

A. Yes.

Paper marked Complainant's Exhibit 72 (Mahl).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 72 (Mahl) is a correct copy of Mahl's Exhibit No. 11 in the record of the Interstate Commerce Commission February 28, 1907, and I offer the same in evidence.

Complainant's Exhibit 72 (Mahl) is as follows:

COMPLAINANT'S EXHIBIT 72. (Mahl.)

W. D. C. No. 2.

UNION PACIFIC RAILROAD CO.

Operating surplus at the time the $100,000,000 stock issue was authorized—showing resources from February 28, 1901 (when stock issue was authorized), to June 30, 1901, and how applied.

RECEIPTS.

First Lien Convertible Bonds Issued	$100,000,000.00	
Convertible into common stock	6,043,000.00	
		$93,957,000.00
Common stock issued in exchange for Convertible Bonds	$6,043,000.00	
Common stock issued in exchange for O. S. L. and O. R. & N. Stocks	23,200.00	
		6,066,200.00
484 Preferred stock issued in exchange for O. S. L. Income "B" Bonds	30,000.00	
Preferred stock in exchange for O. R. & N. Preferred stock	13,300.00	
		43,300.00
Total receipts for securities issued		$100,066,500.00
Decrease in cash on hand	$25,254,762.58	
Less: Increase in other assets	1,763,585.21	
		23,491,177.37
Total receipts		$123,557,677.37

DISBURSEMENTS.

$61,000,000 face value, Northern Pacific purchase money certificates		$61,000,000.00
$75,000,000 S. P. Co. Common stock		41,866,627.48
$1,000 Par value O. S. L. Capital stock		1,000.00
$22,200 O. R. & N. common stock		22,200.00
$13,300 " preferred "		13,300.00
$30,000 O. S. L. Income "B" Bonds		30,000.00
Adjustment in cost of securities acquired from receivers		16,381.50
Total		$102,949,508.98
Less: Green River Water Works Co. Bonds sold		2,000.00
Total payment for securities		$102,947,508.98
Capital expenditures		668,325.25
Decrease in Liabilities:		
Loans paid off	$25,254,762.58	
Less: Increase in current liabilities	11,088,810.17	
		14,165,952.41
		$117,781,786.64
485 Decrease in Profit and Loss, viz:		
February 28, 1901	$10,182,234.19	
June 30, 1901	4,406,343.46	
		5,775,890.73
Total disbursements		$123,557,677.37

MEMOR. OF PROFIT AND LOSS.

	Dr.	Cr.
Balance February 28, 1901		$10,182,234.19
Gross transportation receipts, 4 months		8,042,632.63
Other income		1,890,900.39
Expenses and taxes, 4 months	$5,020,116.41	
Interest on Funded Debt, 4 months	1,959,713.34	
Dividends 4 months	2,714,004.00	
Appropriation 4 months	250,000.00	
Dividends prior to Mar. 1, 1901	5,265,590.00	
Appropriation prior to Mar. 1, 1901	500,000.00	
	$15,709,423.75	
Balance June 30, 1901	4,406,343.46	
Total	$20,115,767.21	$20,115,767.21

JANUARY 5, 1907. WM. MAHL.

486 By Mr. LOVETT:

Q. On the previous hearing of this matter by the Commission in this city in January last, there was introduced a resolution which seemed to have occasioned considerable surprise, passed by the board of directors or the executive committee of the Union Pacific, I believe, in July or August last, authorizing Mr. Harriman—or amending, rather, a resolution adopted in 1902, authorizing Mr. Harriman to borrow money needed by the company, the amendment being to authorize him also to pledge collateral. Will you please state at whose instance that resolution was passed, and whether Mr. Harriman had any knowledge of it before it came before the committee.

A. He did not. The resolution was passed at my request. It became necessary. Some of the California banks wanted, in addition to the authority to borrow money, they wanted also the authority to

show that the chairman had the right to pledge collateral for the loan. This happened in possibly one or two instances, and I recall now an instance here in the city, and I therefore thought it best to introduce and adopt a general resolution, as these resolutions were asked for from time to time, and I think I had talked to Judge Lovett about drafting a resolution.

Q. And a similar resolution was passed then by the Union Pacific, Southern Pacific and Oregon Short Line to meet the situation arising in connection with the ordinary financial transactions of the company?

A. Yes.

Q. And did Mr. Harriman have any knowledge of that so far as you know before it came before the board?

A. No. There is a resolution, I think, in that connection.

487 Mr. LOVETT. I would like to introduce in that connection a resolution passed by the board of directors of the Southern Pacific Company at the time that Mr. Huntington was president. I will read it:

"The following resolution was submitted to the board, and, on motion of Mr. Thomas H. Hubbard, seconded by Mr. H. E. Huntington, was unanimously adopted, viz:

"Resolved, that the president of this company, or the vice-president thereof, be, and he is hereby authorized and empowered to borrow money from time to time, from such persons or corporations, and for such times and on such terms, as in his judgment may be for the best interests of the company, such sums of money as he may deem necessary to carry on its business, and, to that end, to execute, in the name and on behalf of the company, promissory notes or other evidences of indebtedness, and, to secure the same, to pledge or hypothecate securities, stocks, bonds, or other personal property, or mortgage any real property of this company; and that the assistant treasurer of this company be, and he is hereby authorized to withdraw any securities now or hereafter held to secure such promissory notes or other indebtedness of this company and replace the same by others whenever such change shall in his judgment be advisable, and said assistant treasurer is hereby authorized to receive and receipt for matured or maturing coupons appertaining to any such hypothecated bonds."

"I, Alex. Millar, secretary of the Southern Pacific Company, do hereby certify that the above and foregoing is a true copy of a

488 preamble and resolution duly adopted by the board of directors of said company, at a special meeting of said board, held at the office of Mr. Thomas H. Hubbard, first vice-president of said company, No. 23 Broad Street, in the city and state of New York, on the 26th day of January, 1900, at which a quorum was present.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said company this 13th day of February, 1907.

(Signed) ALEX. MILLAR,
Secretary.

[SEAL.

SOUTHERN PACIFIC COMPANY,
Kentucky.

Q. That is a copy of the resolution passed by the Southern Pacific board on the 26th day of January, 1900. Who was president of the Southern Pacific Company at that date, the 26th of January, 1900?

A. C. P. Huntington.

Q. Is there anything unusual in resolutions of this character? Are they customary in financial institutions in this city, in borrowing money?

A. In all companies that I have been connected with, the president is always authorized to borrow money as may be needed.

Mr. KELLOGG. Do you remember when that last resolution authorizing the president to borrow money and pledge stocks was passed?

WITNESS. I think some time in July.

Mr. KELLOGG. Has any money been borrowed on that other than shown by the statements you have furnished us?

WITNESS. None that I recall.

489 Mr. KELLOGG. One question I would like to ask you. Mr. Harriman said that monthly statements of the earnings of railroads were sent to the stockholders.

WITNESS. Yes, sir.

Mr. KELLOGG. That is, a condensed statement of the gross earnings every month, is it not?

WITNESS. No, it is the gross earnings less—we state the gross earnings and then the operating expenses and taxes and then the surplus. Now, any one who is familiar and who can familiarize himself with the fixed charges of the company from its annual report can make a statement of just what surplus is left for payment of dividends after payment of fixed charges.

Mr. KELLOGG. The net is not arrived at until two or three weeks after the closing of the books for the month, is it?

WITNESS. No, we are generally able to furnish that information to the stockholders about the 3d or 4th of the month following.

Mr. KELLOGG. About a month later?

WITNESS. Yes.

Mr. KELLOGG. Now, the Southern Pacific, for some months before the making of that dividend, furnished no statements, did it?

WITNESS. It did not, no.

An adjournment was then taken until the morning of Thursday, December 3, 1908, at 10.30 o'clock.

490 ROOM 515, CUSTOM HOUSE, NEW YORK, CITY,
Thursday, December 3, 1908—10:30 A. M.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present: On behalf of the Complainant: Mr. C. A. Severance; on behalf of the Defendants, Mr. Maxwell Evarts.

Mr. SEVERANCE. I next offer in evidence, pursuant to our stipulation, portions of the testimony given by William D. Cornish, a witness before the Interstate Commerce Commission, who testified on

the 5th day of January, 1907, at the city of New York. I understand that it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Cornish were upon the stand giving the same testimony.

Mr. EVARTS. Yes.

WILLIAM D. CORNISH

testified:

Examined by Mr. KELLOGG:

Q. Mr. Cornish, you are vice-president of the Union Pacific Company, are you not?

A. I am.

Q. And of the Oregon Short Line Company?

A. Yes, sir.

Q. And of the Oregon Railroad & Navigation Company?

A. Yes, sir.

Q. And of the Southern Pacific Company?

A. Yes.

Q. Are you a director or an officer of the San Pedro Company?

A. I am a director.

491 Q. And on the executive committee of the San Pedro Company?

A. Yes.

Q. You are a director in each one of those railways I mentioned?

A. Yes.

Q. You are familiar in a general way with the Pacific system, including the Union Pacific, the Short Line, the Navigation Company and the Southern Pacific and its subsidiary lines, are you not?

A. I am.

Q. You were a master in chancery of the court during the receivership of the Union Pacific?

A. Yes, sir.

Q. And were familiar with the acquisition of the Union Pacific and its subsidiary lines by the Union Pacific Company?

A. I was and am.

Q. Prior to the acquisition of the stock of the Southern Pacific Company in March, 1901, the Union Pacific controlled, by stock ownership, directly or indirectly both the Short Line and the Navigation Company's lines, did it not?

A. Yes.

Q. That is, it controlled by the ownership of a majority of stock the Short Line Company?

A. Yes, sir.

Q. In a general way, the lines of the Short Lines extend from Granger on the east to Huntington on the west, and from Salt Lake on the south, north to Butte?

A. To Silver Bow.

Q. And the Short Line owned and controlled the various lines south of Salt Lake and southwest?

A. They were part of the property.

Q. The Short Line or the Union Pacific, prior to the acquisition of the Southern Pacific stock in 1901, controlled the Navigation Company?

A. Yes, I think they both had stock.

492 Q. Since that time, or at about that time, the Union Pacific got all of the stock, substantially, of both companies, didn't it?

A. Yes.

Q. So that the Union Pacific operates now under joint operation the entire lines from Council Bluffs and Kansas City on the east to Portland on the west?

A. I don't regard it so, Mr. Kellogg. The separate companies operate their own property.

Q. You make a joint report in the annual report?

A. That is the financial report made in New York.

Q. You consolidate the earnings?

A. For that purpose.

Q. The operating officials lap over from one onto the other?

A. They do in part; not the managing officials, no.

Q. Mr. Bancroft operates a part of the Short Line?

A. Operates all of the Short Line.

Q. And part of the Union Pacific?

A. At present part of the Union Pacific west of Green River.

Q. The manager of the Oregon Railroad & Navigation Company operates the Oregon Railroad & Navigation and the lines of the Central Pacific in Oregon, does he not?

A. The lines of the Southern Pacific as far south as Ashland.

Q. The lines of the Southern Pacific as far south as Ashland, which is about the south line of the state of Oregon?

A. State of Oregon.

Q. So that it is a fact that both the operating and traffic officials operate the entire system as far as Portland, do they not?

A. Well, each road has its own traffic officials, I think distinctively confined to the line.

493 Q. Yes, but they have common traffic officials and common operating officers?

A. To the extent that you have stated, yes.

Q. Now, the ownership of the various sub-companies of the Southern Pacific are accurately stated in the annual reports, are they not?

A. I believe so, yes, but I have not been over them.

Q. In a general way, the Southern Pacific Company, which is a corporation in Kentucky, operates under lease and owns substantially all the stock of the lines from Ogden to San Francisco and from Portland to the Texas line?

A. Yes.

Q. And controls by stock ownership all of the Texas and Louisiana lines as far as New Orleans?

A. Controls and owns a majority of stock of those lines.

Q. I say controls by stock ownership.

A. They control the company through the stock.

Q. Now, what steamship line does the Southern Pacific control by stock ownership?

A. The line of steamers which is running from New York to New Orleans belongs to the Southern Pacific Company. The Pacific Mail is controlled through a slight majority of the stock by the Southern Pacific Company. The Occidental & Oriental is partly owned by the Union Pacific, but I have forgotten just how that stands. It used to be held partly in public and partly by the Union Pacific.

Q. You think the Union Pacific owns the control of the Occidental & Oriental Steamship Lines now?

A. I can't just remember how it stands; I have not looked.

494 Q. Does the Southern Pacific own any of the stock of the Occidental & Oriental Steamship Company?

A. I think not.

Q. Now, the Pacific Mail operates lines of steamers from San Francisco to Japan and China?

A. Yes, sir.

Q. The Sandwich Islands?

A. They stop there on some trips.

Q. They also operate a line of steamers from San Francisco to Panama, do they not, or to the connections with the Panama Railroad?

A. I believe they do. There was some question about that a while ago, and yet there was so little to it I don't know.

Q. What company owns by stock ownership the Portland & Asiatic Steamship line?

A. My recollection is that the stock belonged to the Navigation Company.

Q. You understood that it did belong to the Navigation Company?

A. Yes.

Q. Where do those ships run from?

A. Those ships run from Portland to the Orient.

Q. If that company belongs to the Navigation Company, then the Union Pacific Company has a through line of railway and steamships through its stock ownership, from Council Bluffs and Kansas City to ports in the Orient via Portland, does it not?

A. It would amount to that, yes.

Q. And the Southern Pacific has a through line of transportation from New York via Southern Pacific and San Francisco to the Orient, by steamship and rail?

A. Yes, through their control of the Pacific Mail.

Q. Through their control of the Pacific Mail and the Eastern steamship lines. Judge Cornish, prior to the construction

495 of the San Pedro road, the Oregon Short Line, you say, owned or controlled by stock ownership various lines of road south of Salt Lake City and southwest?

A. As far south as Milford and Frisco in Utah, yes.

Q. About what time was it that Senator Clark undertook the construction of that road?

A. I think it was in 1901.

Q. After that time there was a contest in the courts between the San Pedro Company and the Short Line Company, was there not, as to some right of way which each company was claiming?

A. The San Pedro Company under its present organization was operating a small piece of road in California, but had no road east or towards Salt Lake from about Los Angeles. There was another company, another corporation, of which I don't remember the name, which started a controversy in regard to a grade in Nevada with the Short Line. It was not the San Pedro Company, but it was a company which I assume it controlled, because it disappeared afterwards, and that controversy went into the Courts, and there was an injunction issued, the effect of which was that the Short Line retained the then existing grade which had been graded some ten or twelve years before, and built its line down to Calientes, on that grade, having bought the intervening section between Milford and the state line.

Q. That is, some years before the Short Line Company had projected a road substantially along the same line through Nevada that the San Pedro road afterwards constructed on?

A. As far as Calientes.

Q. As far as Calientes?

496 A. But in an entirely different route, but towards the same section of California.

Q. Yes, toward the same section of California, and the Short Line Company had constructed a grade part of the distance?

A. Yes, sir.

Q. Through a canyon?

A. Partly—about 40 miles through a canyon.

Q. There was not room for two railroads through that canyon, was there?

A. Yes. Not 200 feet right of way each, but there was room.

Q. Both companies were struggling for that right of way?

A. Yes, sir, particularly because it had been constructed and the grade was nearly perfect, and there were five tunnels there, and it was worth something. There was another route over the hills.

Q. After the Short Line got or retained possession by permanent injunction, there was a settlement, was there, between Mr. Harriman and Mr. Clark, of this difficulty?

A. The contract that has been offered in evidence, dated in 1902, was the result of about a year's negotiations that were had.

Q. Prior to that contract, there was about a year's negotiation between Mr. Harriman, representing the Short Line, and yourself, representing the Short Line, and Mr. Clark, was there not?

A. Yes.

Q. You finally reached a settlement with Mr. Clark?

A. Yes.

Q. That settlement contemplated the conveyance to the San Pedro Company of 512 miles of railway of the Short Line Company, did it not?

A. Yes, sir, about that.

Q. West, south and southwest from Salt Lake City towards
497 California?

A. From the neighborhood of Salt Lake City, yes.

Q. And those lines were conveyed by the deeds that you have furnished?

A. Yes.

Q. That settlement also contemplated the construction of the San Pedro Line to California—to Los Angeles?

A. Except as to such trackage as it might obtain that was contemplated in the contract.

Q. I mean it contemplated the construction of the line to about San Bernardino and leasing certain track rights into Los Angeles?

A. I have forgotten the exact terms of the contract. They were building a line down to Riverside and completed it, and contemplated trackage over the Southern Pacific to San Bernardino, and over to Daggett.

Q. Well, that contract contemplated the construction of a line of railway and the acquisition of trackage rights so the San Pedro would have and control a complete line from Salt Lake to Los Angeles?

A. Yes, and to San Pedro and Pasadena.

Q. San Pedro is the seaport beyond Los Angeles, is it not?

A. Yes, sir.

Q. Over what tracks does the San Pedro run from Los Angeles to San Pedro, the seaport?

A. It runs over its own tracks.

Q. At what place does the Southern Pacific reach the Coast?

A. At San Pedro; that is, in that vicinity and other points near by.

Q. And Santa Monica, does it not?

A. Yes.

Q. That is, near Los Angeles, I mean.

A. Yes, sir.

Q. Mr. W. A. Clark is president of the San Pedro Line, is he not?

A. He is.

498 Q. W. H. Bancroft is vice-president?

A. Yes, sir.

Q. Mr. Bancroft is the manager of the Union Pacific lines and the Short Line—the Union Pacific lines west of Green River and East Huntington, is he not?

A. Yes, sir.

Q. Living at Salt Lake?

A. Yes, sir.

Q. He has direct control of the operation of the San Pedro Line, has he not?

A. No, sir.

Q. Who is J. Ross Clark?
A. A brother of Senator Clark.
Q. He is second vice-president?
A. Yes, sir.
Q. Who is R. E. Wells?
A. General manager of the San Pedro Line.
Q. From what line of road did Mr. Wells come to the San Pedro?
A. From the Santa Fe or one of its subsidiary lines.
Q. Who are the directors of the San Pedro Line?
A. Senator W. A. Clark, J. Ross Clark.
Q. E. H. Harriman?
A. Yes. I will try to give them all to you. (Referring to book handed to witness.) Did not you have a letter with the lists?
Q. (After examining papers on his table.) Oh, yes, I think we did—yes, I think they are in. They are the directors elected pursuant to these letters signed by Mr. Clark and Mr. Harriman?
A. Yes, sir; February——
Q. 1906?
A. No.——
Q. The directors elected in 1906 were W. H. Bancroft, whom you have just described.
A. Yes, sir.
Q. H. I. Bettis (referring to paper), who is he?
A. The auditor of the company.
Q. Is he also an officer of the Short Line?
499 A. No, that is his sole duty.
Q. Was he ever in the employ of the Union Pacific?
A. He was.
Q. When?
A. Well, until about 1903 he was chief clerk in the Omaha office.
Q. He went from the Union Pacific to the San Pedro Line about 1903?
A. I think so.
Q. W. D. Cornish and E. H. Harriman, I see, are also directors?
A. Yes, sir.
Q. (Referring to paper.) W. R. Kelly at that time was general solicitor of the Union Pacific?
A. Mr. Kelly has just gone into the board this fall. He was formerly general solicitor of the Union Pacific, but left a year ago on account of his health, but having recovered, he took up this work.
Q. He is now solicitor for the San Pedro Line?
A. General counsel, yes, sir.
Q. Did you not get Mr. Kelly elected or suggest his election to the board and his appointment as attorney?
A. I think I am a very good friend of Judge Kelly. I tried to get him something to do, yes, when he recovered his health, but I did not have control of it.
Q. Who did—Mr. Harriman?
A. Mutual suggestions—suggestions came to me really from W. A. Clark.

Q. Agreed to by both parties?

A. Yes, sir.

Q. (Referring to paper.) Who is W. G. Kerckhoff?

A. A citizen of Los Angeles, not connected with the Southern Pacific or Union Pacific, so far as I know.

500 Q. What is his business, do you know?

A. He is a business man. I have forgotten what his business is.

Q. R. C. Kerens is of St. Louis, is he not?

A. Yes, sir.

Q. And Thomas Kerns?

A. Of Salt Lake.

Q. T. F. Miller?

A. He is a citizen of Los Angeles. I do not know his business.

Q. W. H. Comstock?

A. He is secretary of the company.

Q. Where did he come from—what company? Do you know?

A. No, I do not. He was with the company before I knew anything about him.

Q. Judge Cornish, the Union Pacific and Southern Pacific organized an express company within the last few years, did they not?

A. What companies?

Q. The Union Pacific and Southern Pacific—the Pacific Express.

A. No, sir; that company existed before the receivership.

Q. Before the receivership?

A. Yes, sir.

Q. What is the Pacific Express Company?

A. It is a commercial express company operating over the so-called Gould system and over the Union Pacific system.

Q. What company owns it?

A. The Union Pacific owns 40 per cent, the Wabash 20 per cent, and the Missouri Pacific 40 per cent.

Q. Does the Southern Pacific own any of that?

A. No, sir; not to my knowledge.

Q. Now, about March 23, 1901, I notice that the Union Pacific was authorized to issue one hundred millions of common stock—I will show you the statement. (Handing paper to witness.) That was authorized about March, 1901.

A. I believe so.

501 Q. About that time one hundred million dollars of convertible bonds were issued by the Union Pacific, were they not?

A. I believe so.

Q. Those bonds were convertible into that common stock, were they not, at par?

A. Yes, sir.

Q. And those bonds have been converted into the common stock of Union Pacific Company, have they not, with the exception of about $500,000?

A. So I understand.

Q. So, about $99,450,000 of those bonds have been converted into $99,450,000 of common stock of the Union Pacific Railway?

A. Something like that; I can not verify your figures.

Q. That $100,000,000, realized from the issue of the Union Pacific common stock, is the money that has been used for acquiring stocks of various railway lines, is it not?

A. I do not know how I could trace that. The money came into the treasury and property has been bought and lines have been constructed and grades changed, and improvements of every kind made and money paid out of the treasury, and at the same time stocks have been bought and sold—and I do not know.

Q. About 1901, about the time that stock issue was authorized, the Union Pacific Company bought over $80,000,000, par value, of the stock of the Northern Pacific Railroad, did it not?

A. I can not remember.

Q. Well, you remember that in 1901 it bought over 400,000 shares of the preferred stock and over 370,000 shares of the common stock, don't you?

A. If I say Yes, Mr. Kellogg, I would verify the figures. I have not thought of that for years.

Q. Well, you know there was $155,000,000 of Northern 502 Pacific stock, don't you?

A. I know there was a large quantity of it; yes, sir.

Q. About $155,000,000, was it not?

A. About that, yes, sir.

Q. And you know that the Union Pacific acquired, about the time that stock was issued, the majority of the stock, preferred and common, together?

A. I so understood; yes, sir.

Q. Well, now, the Union Pacific did not have the money in the treasury from operation of its lines to buy any such amount of stock?

A. I assume not. I did not understand it so.

Q. And that issue of convertible bonds and that issue of stock of $100,000,000 was primarily made to enable the Union Pacific to buy such stocks, was it not?

A. I think not. I did not understand it so.

Q. Well, was not that the real purpose?

A. I think not.

Q. That is what it was used for, is it not?

A. As I have explained, money must have gone into the treasury and money must have been used out of the treasury, but my recollection is the contrary as to that, that that was the purpose of it.

Q. There was not money enough in the treasury to buy it but for that bond issue, was there?

A. No; but my recollection, Mr. Kellogg, is that the Northern Pacific purchase had nothing to do with the issue of the bonds or the purpose of issuing the bonds at the time the bonds were issued. It was something that came a little later.

Q. Let us see about that. The Northern Pacific purchase was made about March, 1901, was it not?

A. I can not remember the dates.

503 Q. Between March 1st and the 8th of May, 1901, the Union Pacific bought that stock, did it not?

A. I do not remember the dates.

Q. What?

A. I do not remember the dates. It was along in that spring.

Q. They did not buy anything after the day of the panic, did they?

A. I did not buy any, and had nothing to do with the purchase. I do not know what they did.

Q. Who did that?

A. It must have been done under Mr. Harriman's direction, I suppose, or the executive committee. I had nothing to do with it.

Q. Have you had anything to do with the purchase and sale of these various stocks?

A. No, sir.

Mr. LOVETT. Mr. Kellogg, here is the resolution under which the convertible bonds were issued by the Union Pacific (presenting book to Mr. Kellogg), and here is a copy of the circular (presenting paper). This is a copy of the circular I referred to yesterday as probably explaining somewhat the purpose. It refers only to forty millions applied to the purchase of the Southern Pacific stock.

Mr. SEVERANCE. The resolution was put in yesterday.

Mr. LOVETT. That goes on in that connection, that at the same meeting where the issue of a hundred millions of convertible bonds was authorized, it was found necessary to increase the authorized capital stock of the company to a like amount, so that, as the bonds were offered for conversion, stock could be issued. That proceeding is explained in the resolution. As to the detail—as to what was done with the rest of the money—I have not got that informa-

504 tion yet. I suppose the resolution states it in a general way.

The CHAIRMAN. Judge Lovett, do the minutes of the Board of Directors or the Executive Committee authorizing the issue of those securities, and the circular issued at that time, purport to show the purpose of their issue?

Mr. LOVETT. Yes, Mr. Chairman. Of course, you understand that in the form of resolution authorizing the issue of bonds of that sort, general terms were used.

The CHAIRMAN. Of course.

Mr. LOVETT. Quite general terms are used in the resolution. The circular then states that the proceeds of forty millions of bonds are to be applied to the purchase of Southern Pacific stock or to the paying for Southern Pacific stock that has been bought.

Mr. SEVERANCE. That is forty millions.

Mr. LOVETT. Yes, forty millions. As to what appropriation was made of the rest of it I do not know. That will appear from the books.

Q. In a general way, Mr. Cornish, it was not necessary to borrow one hundred millions on convertible bonds and issue one hundred millions of stock at that time to finance the road unless it was going to buy or did buy some stock, was it?

A. My recollection is that the company was quite heavily in debt on account of purchases of road and betterments. Extraordinary betterments had accumulated and they had not been financed, as the phrase is, and the purchase of the Southern Pacific being in contemplation, the subject of financing for the advances, as they
505 call them, and the purchase of the Southern Pacific was considered, and they made up this form of bond, providing for $100,000,000 of bonds, and I think it states there (referring to circular) that bonds not required in that purchase be used for corporate purposes, or left it open to the board of directors to make disposition of the bonds as occasion might arise. I can not recall the items, but I remember such items as the purchase of the Julesburg Cut-Off, and other large sums had not been taken care of.

Q. The first circular issued in reference to the $100,000,000 of bonds states that forty millions are now offered for subscription for the purpose of buying the Southern Pacific stock?

A. Yes, sir.

Q. (Referring to circular.) That is the first circular?

A. Yes, sir.

Q. I will have that marked. (Same is marked Exhibit 1 Cornish.)

Paper marked Complainant's Exhibit 73 (Cornish).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 73 is a correct copy of the paper marked Exhibit 1 (Cornish) in the record of the Interstate Commerce Commission, New York hearing, January 5, 1907. I offer Complainant's Exhibit 73 (Cornish) in evidence.

Complainant's Exhibit 73 (Cornish) is as follows:

COMPLAINANT'S EXHIBIT 73. (Cornish.)

UNION PACIFIC RAILROAD COMPANY.

First Lien Convertible Four Per Cent. Gold Bonds.

120 BROADWAY, NEW YORK, *Feb. 13, 1901.*

To the holders of preferred and common stock of Union Pacific Railroad Company:

506 This Company, by action of its Board of Directors and Executive Committee, has authorized the issue of $100,000,000 of ten-year four per cent. Gold Bonds, to be known as First Lien Convertible Four Per Cent Gold Bonds, to be secured by a first mortgage upon unmortgaged railway belonging to the Company and by the pledge of securities owned by it and held in its treasury. These bonds will (subject to the authorization of the necessary increase of the Company's Common Stock) be convertible at the option of the

WITNESS. Yes, sir.

The CHAIRMAN. And about what is the distance from Salt Lake City via Ogden to Portland, Oregon?

WITNESS. I don't remember just offhand; I will furnish that for the record; I don't remember.

The CHAIRMAN. Probably about the same as from San Francisco?

WITNESS. About; I should think about 800 miles.

By Mr. MILBURN:

Q. Judge Cornish, in a contract or traffic agreement that was referred to yesterday, a provision was called attention to which referred to the rates, tariffs, and charges of this San Pedro road for any local business which might be the subject of competition between it and the Southern Pacific Railway Company. What is the territorial region of any such possible competition in local business?

A. It is all in southern California, below Mojave, practically confined to the lines from San Pedro, Los Angeles and Pasadena, and then from there over to San Bernardino.

Q. All confined to traffic in that region which you have mentioned, of southern California?

A. Yes, sir.

Comr. LANE. And that is the practical interpretation which you have given to that clause?

WITNESS. Always, yes, sir; that is our understanding of the contract.

Mr. MILBURN. It says local business in the agreement,
511 which may be the subject of competition between these two roads.

Comr. LANE. Yes. I suppose the word "local" is a word of various meanings, as applied to railroads.

Mr. MILBURN. Yes, but it would be confined to that region.

Comr. LANE. It might be a narrow region or more extensive. I was wondering if this word "local" might not extend through Nevada.

WITNESS. I have always understood not.

Mr. KELLOGG. You know nothing about the traffic end of it?

WITNESS. No. I don't know anything about the rates, but I hear a good deal of discussion and have a good deal to do at times about traffic matters.

Mr. KELLOGG. Local business is a matter of business which might be entirely done on the rails of the San Pedro Company, is it not?

WITNESS. Not in that case with reference to that contract, no.

Comr. LANE. It is any business which you choose to call local, is it not?

WITNESS. I think I would always have a reason, and the reason in this case with reference to this contract, Mr. Commissioner, is that there was an effort here to harmonize the handling of the territory of southern California in the Los Angeles district, and the San Pedro Company wanted to get in on the Southern Pacific lines

so as to handle business in and out, and it only went as far north as Los Angeles, and it was conceded in the contract by the
512 Southern Pacific that it should do business as far as the parallel of Mojave, giving it a right into the Southern Pacific territory below that; and as a part of the understanding and consideration of that, the San Pedro undertook as far as this territory and this business was concerned to not interfere unduly with the Southern Pacific's own business on its own lines, or in competitive territory.

Comr. LANE. Does the Santa Fe run over Southern Pacific lines in Southern California?

WITNESS. From Mojave to Needles, yes, sir.

Mr. KELLOGG. I see the San Pedro leases some trackage from the Santa Fe also.

WITNESS. From a point between Colton and San Bernardino over to Daggett, or over the hill.

Mr. KELLOGG. Is there a contract between the San Pedro and Santa Fe under which they shall maintain rates?

WITNESS. Not that I know of.

Mr. KELLOGG. Prior to the construction of the San Pedro line, the only way from Southern California to Ogden or Salt Lake was via Sacramento, was it not?

WITNESS. Yes, sir.

Mr. KELLOGG. And now there are two lines, one via Sacramento and one via the San Pedro line?

WITNESS. Yes.

Mr. KELLOGG. And business going from Southern California to Salt Lake entirely over the lines of the San Pedro is local business, is it not,—ordinarily local business?

WITNESS. No, I should call that through business.

513 Mr. KELLOGG. Well, it is local to their line, is it not?

WITNESS. It is their line of business, yes, sir.

Mr. KELLOGG. It is local to that line, isn't it?

WITNESS. I should not use that phrase, no.

Mr. KELLOGG. It does not go on any other line?

WITNESS. No.

Mr. KELLOGG. Ordinarily in railroading, local business is business that is local to the particular line, isn't it?

WITNESS. I do not understand it so.

Mr. MILBURN. It says local business which is competitive.

Mr. KELLOGG. It is business from Salt Lake, and is competitive?

WITNESS. Yes.

Mr. KELLOGG. It is local business that is competitive that they agree to maintain under that contract?

WITNESS. No, the Southern Pacific has no business to Salt Lake.

514 Mr. SEVERANCE. I next offer, pursuant to the stipulation, the testimony given by W. V. S. Thorne, a witness before the Interstate Commerce Commission, who testified on the 5th day of

January, 1907, at the city of New York. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Thorne were upon the stand giving the same testimony?

Mr. EVARTS. Yes.

W. V. S. THORNE,

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live, Mr. Thorne?

A. New York City.

Q. What is your business?

A. I am director of purchases of the Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company, and the Southern Pacific Company.

Q. Will you kindly state what your functions and duties are as director of purchases of these various lines?

A. Well, they are to purchase locomotives, cars, rails, bridges, or any other material which the railroad companies use in large quantities and where it is advantageous to make an agreement direct with the manufacturer where we can concentrate our business with one manufacturer.

Q. Well, now, do you have on the various lines of the system purchasing agents also?

A. We have local purchasing agents.

Q. And where are these local purchasing agents located, and who are they?

A. Mr. J. W. Griffith is local purchasing agent of the Union
515 Pacific at Omaha. Mr. Hutchinson is purchasing agent of the Oregon Short Line at Salt Lake City. Mr. Koehler is purchasing agent of the Oregon Railroad & Navigation Company. Mr. I. O. Rhoades is purchasing agent of the Southern Pacific Company at San Francisco; and Mr. N. P. Randolph is purchasing agent of the Morgan's Louisiana & Texas Railroad and Steamship Company at New Orleans.

Q. Is the Pacific Mail Steamship Company under your jurisdiction?

A. No, sir.

Q. You don't have anything to do with the purchases for the ships?

A. In some of the contracts which I make, which cover material used by the Pacific Mail & Steamship Company, I add a clause, if I think it desirable, whereby the manufacturer agrees to furnish the material covered by the agreement to the Pacific Mail Company, the Pacific Mail Steamship Company, at the price that they quote to the railroad companies, if the steamship company desires to buy it, and then I send a copy of that agreement to the general manager of the steamship company, and he can make use of it or not, as he pleases. In some cases he does, and in some cases he does not. I do not make any agreement that will bind the steamship company; and I am not an officer of that company.

Q. Now, Mr. Thorne, you named those various gentlemen who are purchasing agents of the different lines of roads. Do they make reports to you of their action?

A. Not unless I ask them particularly about something.

Q. They do not?

A. No.

Q. But you do call on them for information?

A. Oh, yes.

516 Q. And that is sent to you?

A. Yes, sir.

Q. Now, do you make contracts with manufacturers in which you act for more than one of these lines at the same time?

A. Yes, sir.

Q. That is, I suppose, you buy a lot of cars or locomotives; do you sign as director of purchases, say, the Southern Pacific and the Union Pacific, or the Southern Pacific and the Oregon Short Line?

A. Well, in buying locomotives we generally buy them in large lots, say, 250 at a time. And the contract would then be made in the name of the Union Pacific Company and later, when the locomotive builders get these locomotives under construction, the information is then sent to them as to which part of the different lines they are to be assigned to, and at that time, after they have that information, they make their bills against whatever railroads the locomotives are assigned to. At the time the locomotives are originally ordered, we do not know where they are going, and we do not furnish that information to the locomotive builders sometimes until six months after the locomotives are ordered.

Q. So that, in the first instance, you make a contract for an entire consignment of locomotives in the name of the Union Pacific Railroad?

A. Yes, sir.

Q. And then afterwards distribute them as may be determined?

A. Yes, sir.

Q. And the invoices are made against the particular line to which they are assigned?

A. Yes, sir.

Q. How is it with cars, freight cars?

A. The same way.

Q. And with passenger cars?

A. The same way.

517 Q. The same way? What official of the allied lines determines what number of these locomotives or cars shall go to one system or the other?

A. Well, Mr. Kruttschnitt, the director of maintenance and operation.

Q. He distributes them?

A. He gives me information as to what is wanted, and then that request goes to the Executive Committee for approval, and then comes to me.

Q. You say, "goes to the Executive Committee." You mean the Executive Committee of the Union Pacific?

A. Well, the Executive Committee of the company concerned, I suppose. I don't know where Mr. Kruttschnitt gets authority from.

Q. Well now, Judge Lovett suggests how this is done. See if that is your understanding. That you will, for instance, give an order for 250 locomotives. Now, when these locomotives are completed, or a substantial number of them completed, Mr. Kruttschnitt determines how many he will send to one line or another line, and then he makes up, signing on behalf of the Southern Pacific, we will say, or the Union Pacific, as the case may be, a requisition for so many locomotives?

A. Yes, sir.

Q. He sends these requisitions in to Mr. Harriman, who is the chairman of the executive committee of all the lines, and Mr. Kruttschnitt's requisitions are voted by the executive committee of the particular line to which Mr. Harriman refers these requisitions; is that right?

A. Yes, sir.

Q. That is the modus operandi of distributing these locomotives?

A. Yes, sir.

518 Q. You don't remember of any case, do you, where Mr. Kruttschnitt's recommendations or requests were disapproved?

A. I have no means of knowing whether they are disapproved or not, until approved and come to me approved.

Q. You haven't known of any such case where he has made a distribution which has been disapproved?

A. I do not get the distribution until after it is approved.

Q. You get the distribution after it has gone through the executive committee?

A. Yes, sir.

Q. You say that is the same method employed in the case of cars, both freight and passenger?

A. Yes, sir.

Q. Now, do you buy other supplies aside from locomotives and cars?

A. I make contracts covering various other supplies, copies of which are sent to the local purchasing agents, and they buy under those agreements direct from the manufacturers.

Q. That means then, doesn't it—take the case of steel rails.

A. I buy rails direct.

Q. You buy rails from the manufacturer?

A. Yes.

Q. You buy them on requisition for them, or do you buy a certain number that seems to you advisable to contract for?

A. That is handled about the same way that locomotives are. There is a requisition made out early in the summer as to what the requirements will be for the following calendar year.

Q. For each line?

A. No, the aggregate requirements.

Q. Who makes that out?

A. Mr. Kruttschnitt.

Q. Mr. Kruttschnitt makes that out, and in that requisition he does not state for which line those rails are needed?

A. No, sir; he don't know at that time.

Q. He don't know?

A. No.

519 Q. But he estimates as best he can the number of tons of rails that will be needed by the different lines during the year?

A. Yes, sir.

Q. And he notifies you of that aggregate?

A. Yes, sir.

Q. And then you make a contract?

A. Yes, sir.

Q. Then, how are these rails distributed,—on requisitions the same as the cars and locomotives?

A. The same way.

Q. You spoke a moment ago of certain material you would contract for, and of which contracts you notified the local purchasing agent. What class of materials are those?

A. Those are kinds of materials which they are constantly ordering from time to time.

Q. Lumber?

A. For which they have requisitions every week or every month.

Q. Lumber, you mean?

A. No, not lumber, but things like car wheels, car couplers, brake-beams, axles, springs, or any other parts of cars and locomotives or supplies for general use.

Q. Now, in the case of such articles you make a contract with the manufacturer or dealer?

A. I make it with the manufacturers direct.

Q. Manufacturers direct?

A. I make it with the manufacturers direct in almost every case.

Q. Do you make a contract for all that may be needed for the lines, or do you make a contract for a specific number?

A. All that may be needed, as a rule, if it is advantageous to do so. It varies. Some manufacturers could not supply all we need, and other manufacturers, on account of location, would not be in

520 position to take care of the requirements on all parts of the system. Some manufacturers agree to furnish all we used for all lines.

Q. That is to say, as to these very small articles, you make contracts in the case of a manufacturer who is able to supply all you may need for all of the articles of that type that may be needed by any part of the system, and then you notify your local purchasing agents, and they may call on them for the deliveries when they are needed?

A. Yes, sir.

Q. That is the case with a great deal of your purchasing?

A. Yes, sir, that covers a large part of our purchases.

Q. And they fix a price—you fix the price by contract with the manufacturer?

A. Yes, sir.

Q. And the amount that will be taken up under that contract will be determined from time to time as the needs of the line demands?

A. In some agreements a maximum and a minimum amount is stated, but in most of them they furnish whatever we will require in that line; they agree to furnish whatever we will require in that line.

Q. How is it with lumber?

A. Purchases of lumber are made entirely by the local purchasing agent. They come from local sources. There is no one central point from which we could buy lumber to advantage.

Q. Do you have more than one purchasing agent on any one of the several lines making up your system; take the Southern Pacific, for instance, running from Portland to New Orleans; do you have more than one purchasing agent?

A. The purchasing agent at Portland purchases for the lines in Oregon of the Southern Pacific Company. The purchasing agent at Salt Lake of the Oregon Short Line, also purchases
521 for the Southern Pacific line east of Sparks, Nevada.

Q. By whom were you appointed, Mr. Thorne, as purchasing agent of these lines?

A. By Mr. Harriman.

Q. Were you appointed for the various lines at the same time?

A. Yes, sir.

Q. As director of purchases?

A. Yes, sir.

Q. Your position was created, was it not, after the acquisition of the Southern Pacific stock by the Union Pacific?

A. Yes, sir.

Q. Judge Lovett suggests when was your position created?

A. I think about three years ago.

Q. You have your office in New York?

A. Yes, sir.

Q. And your salary is distributed over the Southern Pacific, the Union Pacific, the Oregon Short Line, and the Oregon Railroad and Navigation Company?

A. I don't know how it is distributed. The accounting department does that, and I have no knowledge how it is distributed.

Q. All you are interested in is to get the money?

The CHAIRMAN. From whom do you get the money?

WITNESS. I get the money by check from the treasurer.

The CHAIRMAN. Treasurer of what?

WITNESS. Treasurer of the Union Pacific.

Q. It comes to you from the Union Pacific?

A. Yes, sir.

Mr. SEVERANCE. Any questions, Mr. Milburn?

Mr. MILBURN. No, sir.

The CHAIRMAN. That seems to be all, Mr. Thorne. You may be excused.

Witness excused.

522 Mr. SEVERANCE. I next offer, pursuant to the stipulation, the testimony given by David Willcox, a witness before the Interstate Commerce Commission, who testified on the fifth day of January, 1907, at the city of New York. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Willcox were upon the stand giving the same testimony?

Mr. EVARTS. Yes.

DAVID WILLCOX

testified:

Examined by Mr. KELLOGG:

Q. I notice you were elected a director in the Southern Pacific Company in 1905; is that correct?

A. I think so. I don't remember the date exactly.

Q. You were also elected a director the same year in the Union Pacific Company; is that correct?

A. I don't remember the dates, Mr. Kellogg. Probably you have them correctly, yes.

Q. About 1905, I think it was.

A. About then, yes.

Q. In both companies?

A. I was in the Southern Pacific for some time before I was in Union Pacific.

Q. You were elected, according to the——

A. No, I don't think I was elected in Union Pacific—yes, it may have been 1905, but it was quite an interval of time.

Q. It appears, according to the minutes of the board of directors meeting, that you were elected in April, 1905, in the Southern
523 Pacific Board, and that in October of the same year you were elected in the Union Pacific board.

A. No doubt those minutes are correct.

Q. I do not expect you to recollect exactly.

A. No, I can't remember.

Q. Substantially that?

A. Yes.

Q. And you have since been a director in both companies?

A. Yes.

Q. At whose request did you take a position on the boards of those two companies?

A. Well, I think in the Southern Pacific Mr. Harriman spoke to me about it; I don't remember that any one spoke to me about it in Union Pacific until I received notice of my election.

Q. Who notified you—Mr. Harriman?

A. No, I mean from the secretary. I might say in explanation, I have known Mr. Harriman for perhaps thirty-five years, and it was natural enough for him to ask me to go into his board.

Q. Quite so; and you understood that that was the reason you were invited into the Board, because of your acquaintance with Mr. Harriman?

A. No, I don't understand that altogether.

Q. I do not mean that that was your qualification at all.

A. I understood the fact that Mr. Harriman had known me a great many years led him to suggest to the Board that possibly I might be of some use as a director; that is all.

Q. I have no doubt of that.

A. Thank you.

Q. Were you at that time financially interested in either one of those companies?

A. Not at the time I was elected, no.

Q. Have you since been to any extent?

A. Yes, I have some stock in both of them.

524 Mr. SEVERANCE. I next offer, pursuant to the stipulation, the testimony given by J. C. Stubbs, a witness before the Interstate Commerce Commission, who testified on January 9th, 1907, at the city of Chicago. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Stubbs were upon the stand giving the same testimony?

Mr. EVARTS. Yes.

J. C. STUBBS

testified:

Examined by Mr. KELLOGG:

Q. You are the traffic director of the Union Pacific Railroad, are you not, Mr. Stubbs?

A. Yes, sir.

Q. Of the Oregon Short Line Railroad?

A. Yes, sir.

Q. Of the Oregon Railroad and Navigation Company?

A. Yes, sir.

Q. Of the Southern Pacific system?

A. Yes, sir.

Q. Of the Pacific Mail?

A. No.

Q. Do you have anything to do with the steamship lines?

A. No.

Q. Prior to——

The CHAIRMAN. Pardon me, Mr. Kellogg. Do we understand, Mr. Stubbs, that your jurisdiction does not cover the Morgan lines from New York?

WITNESS. Well, when I answered as to steamships I referred to the Pacific Mail. Yes, it does extend over the Morgan Line.

Q. The Southern Pacific system, in a general way, then, owns the Morgan Line of steamships from New York to New Orleans

525 and Galveston, does it?

A. I so understand it.

Q. And lines of railway extending from New Orleans through Louisiana and Texas, Arizona and New Mexico, California and Oregon up to Portland?

A. I no not understand that the Southern Pacific owns the lines through Texas.

Q. Well, I mean they control them through stock ownership.

A. Well, I presume that is so, but I would not be a very good witness on that, I think. I don't know the facts.

Q. All the Southern Pacific is under your jurisdiction?

A. Yes, sir.

Q. Including the Texas lines?

A. No, sir.

Q. No?

A. No.

Q. You don't have anything to do with the Texas lines?

A. No, sir, except as to traffic that passes through.

Q. Except as to through traffic?

A. Yes; passing through the state; and to that extent my jurisdiction or control over that is no greater or no less than if these Texas roads were held by perfect strangers.

Q. Well, we will see about that in a minute. Prior to the first——

A. You can take my word for it; you will find that out before you get through.

Q. Prior to the acquisition of the Southern Pacific by the Union Pacific, what was your jurisdiction?

A. The same as now, eliminating the Union Pacific system.

Q. You were the traffic manager of the Southern Pacific system?

A. I was one of its vice-presidents in charge of traffic, to be accurate.

Q. At that time who was the head of the Southern Pacific system?

526 A. Well, until his death, practically, Mr. Huntington was, but after his death Mr. Hays, the general manager——

Q. He was the president, wasn't he?

A. President; yes, sir.

Q. But Mr. Huntington, during his life and the estate after his death, until the sale of the stock to the Union Pacific, controlled the Southern Pacific system?

A. They dominated it.

Q. How many years were you connected with the system?

A. From 1870.

Q. Now, that system, then, included the rail lines that I have mentioned from Portland through San Francisco to New Orleans and the line from San Francisco to Ogden, did it not?

A. Yes, sir.

Q. And the steamship lines from New Orleans and Galveston to New York?

A. Yes, sir.

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Q. Now, what steamship lines at that time did it control on the Pacific?

A. Well, I understand at the time of Mr. Huntington's death the Southern Pacific Company, or the people that controlled the Southern Pacific Company—I can not be exact as to that—held a majority of the stock of the Pacific Mail Steamship Company.

Q. That steamship line had boats running from what ports to what ports?

A. Well, from San Francisco to the Orient, and to Panama and coastwise.

Q. In connection with the Panama Railroad?

A. Yes, sir.

Q. And where?

A. Coastwise points; that is, Mexican points; I believe they made stops——

Q. Did it control any other steamship line on the Pacific?

A. It controlled, with the Union Pacific, the Occidental &
527 Oriental Steamship Company.

Q. What line was that?

A. That was the line that operated between San Francisco and Asiatic ports.

Q. Who owned at that time the stock of that company? How much did each company own?

A. Well, my understanding is that it was equally divided between the individuals controlling the Southern Pacific and the Union Pacific Company, but I can not be accurate as to that.

Q. Well, now, during those days——

A. In other words, I mean to say by that, that I did not know whether the Southern Pacific side was owned by the individuals or by the Southern Pacific Company.

Q. You understand that either the company or the interests with them owned them?

A. Practically the same.

Q. That is practically the same thing?

A. Yes, sir.

Q. Did the Union Pacific, during those days, own a line of railroad from Council Bluffs via Denver, thence to Cheyenne and Ogden, to Portland?

A. I think so.

Q. What steamship lines did it control or the Navigation Company control?

A. I understand that they operated a line of steamships between San Francisco and Portland, and then they had various steamboat lines on the Willamette and the Columbia Rivers.

Q. Did they also own another line of steamships which operated in connection with the Orient at that time?

A. I can not be accurate as to that. They established or there was established a line of steamships between Portland and Oriental ports, first, I think by outside parties.

528 Q. The Doddwell people?

A. Doddwell people, but I don't know but what another man intervened later. However, at the time I went there the Portland and Asiatic Steamship Company was organized and controlled by the Oregon Railroad & Navigation.

Q. At the time you went there—you mean the time you became connected with the Union Pacific?

A. Yes, sir.

Q. And prior to that time either private interests owned a line in connection with the Oregon Railroad & Navigation Company or the Oregon Railroad & Navigation Company owned the Portland & Asiatic Steamship Line which operated to Asiatic ports?

A. I think so.

Q. In connection with the Union Pacific system?

A. Yes, in connection with the Navigation Company.

Q. The Oregon Railroad & Navigation Company was a part of the Union Pacific?

A. Yes.

Q. And controlled by it?

A. I understood so.

Q. You understood that it was at that time, did you not?

A. Yes, sir.

Q. Now——

A. I wish to be understood as saying, in the matter of being controlled by the Union Pacific, that it had its separate organization; that is to say, the president of the Union Pacific Company had nothing to do, had no control over the president of the Navigation Company, but it was generally understood—I understood it—that the stock ownership was in the same hands.

Q. That is, as you understood it, and I believe it to be a fact that the Union Pacific owned the stock and controlled in that way
529 the Short Line and the Oregon Railroad & Navigation Company.

A. I so understood it.

Q. And in connection with those lines from Portland, there was a steamship line running to San Francisco, and a steamship line running from Portland to Asiatic ports?

A. Yes, sir.

Q. And the Southern Pacific had a rail line from Portland to San Francisco?

A. Yes, sir.

Q. Now, Mr. Stubbs, prior to that time—I say prior to March, 1901—I believe that was about the time of the acquisition?

A. Somewhere about it.

Q. Prior to that time you were the traffic manager of the Southern Pacific system, or vice-president in charge of traffic, and familiar with its business for many years, were you not?

A. Yes, sir.

Q. Business from the Atlantic seaboard as far west as Pittsburg and common points all through the Atlantic coast moved via the Southern Pacific, the Morgan Line and Southern Pacific Railway Line to Pacific coast points, did it not?

A. A part of it did.

Q. I didn't say all of it; some of it?

A. Very well. Except as to the city of Pittsburg, Buffalo and Wheeling. The line is somewhat east of those points. I cannot describe it to you exactly, but Pittsburg proper and Buffalo proper and Wheeling proper business did not go that way.

Q. Now, do you say, as a matter of fact, that no business ever went from Pittsburg, Wheeling and Buffalo to the Atlantic seaports and via the Morgan Line and the Southern Pacific to California and Oregon points?

530 A. No, I do not say of my own knowledge that no business ever did that, go that way, but I do say that no tariffs were published, through tariffs were published that way from Pittsburg proper.

Q. Don't you know, Mr. Stubbs, of your own knowledge that business did go that way?

A. Indeed, I do not.

Q. You do not?

A. No, sir.

Q. All right. Business then east of Pittsburg and Buffalo from all that territory or the principal points, all moved via the Morgan Line and Southern Pacific to the Pacific coast?

A. Yes, sir.

Q. To the Orient via the——

A. No. Oh, yes; I am not sure but what it did west-bound. Yes, that is right.

Q. And business from the Orient?

A. No.

Q. It didn't move that way?

A. No.

Q. No business at all?

A. No.

Q. No business came——

A. It was never solicited and I do not recall of a single case.

Q. You know of no business?

A. No business.

Q. But business from the Pacific coast did move to Atlantic seaboard places via that line?

A. Yes, sir.

Q. As far north as Portland?

A. I think not. I am not sure. I think that very little business was done from that end; some hops moved from Willamette Valley, but I wouldn't be sure about that.

Q. Well, business moved from the eastern points for Portland via that line, didn't it?

A. I think some did; that line was worked for Portland.

Q. And even moved to Seattle and Tacoma?

A. No.

531 Q. No business ever went there that way to Seattle and Tacoma?

A. I think not.

Q. Do you know the merchants of Seattle, Tacoma, many of them?

A. No.

Q. Do you remember the Spokane rate case in which merchants of Seattle, Tacoma, Portland and San Francisco testified that merchandise all moved from Pittsburg and eastern points, and even points as far west as Cleveland, to Portland, Seattle and Tacoma via that line?

A. No.

Q. You don't remember that case?

A. I do not remember it. There may have been something of that kind but it was very small; not enough to attract my attention.

Q. But it did move to Portland?

A. I think in small quantities.

Q. Do you remember that prior to 1896 the rates via that line at one time to Portland were less than they were via the Union Pacific for a while?

A. I do not remember.

Q. You do not remember it?

A. No, sir. I should be very much surprised to learn that it was a fact or had been a fact.

Q. Now, the rates today are from that eastern country the same via the Morgan Line and the Sunset route as they are via the all-rail lines on substantially all traffic?

A. Substantially.

Q. That means that the Southern Pacific Company takes the stuff from Pittsburg or east of Pittsburg, pays the rate to the seaboard or absorbs it or the rate is taken out from the through rate, and

532 the traffic is handled at the same rate that it would be hauled via the all-rail lines to California points?

A. Yes, sir.

Q. Business west of Pittsburg and the territory between there and the Missouri River, the rates are the same via New Orleans and Texas Points, with the Southern Pacific as they are via Ogden or other gateways to the Pacific Coast, are they not?

A. I think so, yes, sir.

Q. So that practically on all the business that goes to and comes from the Pacific coast from the territory east of the Missouri River in the United States the rates are the same and it can go either via New Orleans gateway or Ogden?

A. Oh, no; not east: all the territory east of the Missouri.

Q. Well, substantially the rates are the same.

A. Not substantially. I cannot conceive of business, or the rates would be the same from Omaha on the Missouri River or Kansas City by the Sunset Route as they are the other way.

Q. Aren't the rates substantially the same from Kansas City via El Paso to California points?

A. They are to California points, yes, sir.

Q. And substantially the same from St. Joe?

A. I am not sure. However, I will answer that I think you are right.

Q. Passenger business. Take the tourist business in the winter, aren't substantially all the rates east of the Missouri River and as far north as St. Paul the same via the Sunset Route and its connections as via the Union Pacific and its connections?

A. I don't know about that. I don't know as to the St. Paul. I cannot say.

Q. Well, substantially all the territory east of the Missouri
533 River?

A. I think so.

Comr. CLEMENTS. How far south does that answer hold good as to freight and passenger business?

WITNESS. In what respect?

Comr. CLEMENTS. That the rates would be the same either via the Union Pacific or the Sunset route.

WITNESS. The great bulk of the passenger business, according to my understanding, moves on round trip rates, and the round trip rates cover nearly all of this territory.

Comr. CLEMENTS. How far south do you recall is embraced in this territory?

WITNESS. I think as far as New Orleans.

Comr. CLEMENTS. Clear to the Gulf?

WITNESS. But I am not a very good witness as to what the passenger rates are. You can get that from Mr. McCormick.

Comr. CLEMENTS. Well, as to freight; how is that—substantially the same by either route from points in Georgia and Tennessee?

WITNESS. I think the rates from Missouri River points are the same; from New Orleans north and from Missouri River points are the same, from Kansas City north. My recollection is that Galveston and Houston take practically the same as Kansas City. Chicago is a little higher.

Comr. CLEMENTS. Take a point in Kentucky and Tennessee and Georgia; would you include that in the same territory where the rates would be substantially the same by either route?

A. Not east of the Mississippi River; no.

Mr. KELLOGG. What point is that?

Comr. CLEMENTS. I am speaking of the southeastern territory.

534 WITNESS. Still, in a large measure, the rates to California are blanket from nearly all this eastern territory, the same.

Comr. CLEMENTS. That is what I am asking about. What do you mean by this territory; how far south does it go?

WITNESS. My answer was this: That, according to my recollection, the rates from New Orleans and all Mississippi River points are the same, and from Kansas City and all Missouri River points, and from Galveston and Houston are the same. The Chicago rates, I think, differ.

Comr. CLEMENTS. Well, then, do the same rates apply from points east of the Mississippi River and south of the Ohio River; substantially the same by either route?

WITNESS. I cannot be exact as to that; I don't know: the tariffs will show that.

Mr. KELLOGG. Here is the westbound transcontinental tariff. (Counsel hands witness tariff.)

WITNESS. I have been out of the rate business a good many years. I do not know what the rates are any more than some clerk, some stranger.

Comr. CLEMENTS. Of course we are only asking now about their being substantially the same in general; not being absolutely and specifically the same.

Mr. KELLOGG. I think Mr. Stubbs was correct, that substantially all the territory has the same rates.

WITNESS. Now, according to this tariff the class rate, it shows the rates from Missouri River common points on $3.50 scale, first class; Mississippi River, $3.70; Chicago and Milwaukee points, $3.90. But the most of that business is done under commodity rates west-
535 bound, and the differences in the commodity rates are not as marked as they were in the class rates, and I guess it is safe enough to say that they are generally blanket, although not always.

Mr. KELLOGG. I think that is substantially correct.

Comr. CLEMENTS. Well, generally blanket—you mean from Mississippi River points?

WITNESS. All this territory as far east as the Atlantic seaboard.

Comr. CLEMENTS. And that means from New Orleans and as far as the Mississippi River goes north?

WITNESS. Yes, sir. Except that St. Paul is on the Missouri River basis.

Comr. CLEMENTS. And that is the same thing—the same thing is true all east of the Mississippi River?

WITNESS. Practically so. I think there is some—I think that would have to be modified in respect to the southeastern territory, but I am not sure about that.

Q. Then, Mr. Stubbs, why is it that New York has, and always has had, substantially the same rate as other points east of the Mississippi River to California points?

A. Well, the reason has been from the very beginning, the nature of the competition from New York to San Francisco, which was controlling as to all the business; it was the sea competition that fixed the rate.

Q. Via the Southern Pacific?

A. Via all the lines.

Q. Well, via the Southern Pacific was an important factor in that competition, wasn't it?

A. Not at the outset.

Q. Well, it has been for many years?

A. Yes, sir.

536 Q. Well, now then——

A. No more than the other all-rail lines.

Q. Oh, no. With the all rail lines it was the sea competition that made the rate from New York the same to San Francisco as it was from Chicago, wasn't it?

A. Yes, sir.

Q. It was not the all-rail lines that made that?

A. That is hardly the correct statement. It is the sea competition that determined the rate between New York and San Francisco, for example, and all the other rates based on that; sometimes they were higher. There was a period, I think, back in the early 70's, when we charged a higher rate from Chicago and interior points than from New York.

Q. I am coming to that. That was in the early days?

A. I think it was, yes, sir.

Q. And in the traffic meetings when you represented the Southern Pacific system in those days you insisted, did you not, that as you went west from New York to the Interior the rates should be raised, should be higher than New York, because you had to haul the stuff east to New York and then around by the sea?

A. No, I don't think so.

Q. You never made that claim in a traffic meeting?

A. I wouldn't say that. I have probably advocated this, that in order to be consistent, the rates should be higher.

Q. Yes, in the traffic meetings, then, in the early days when the Southern Pacific, when you represented that line, in order to be consistent you insisted that the rates should be higher west of the seaport, in order that your line might participate in that business?

537 A. Oh, no. I wouldn't state it that way. They were treating that in an academic manner.

Q. No, it was not academic.

A. Yes, it was academic. Now, wait a minute. You will understand that when this line—now, we are going back; I am, at least, to the early days, say previous to 1883.

Q. Well?

A. Or 1885. When I went to California in 1870 practically all the business from this territory and east of this territory moving to San Francisco moved via sea.

Q. Yes.

A. We didn't get a hatful of the through business. The merchants had their connections made and adjusted to that business. We had

to make the rates from time to time to meet competition, primarily of the Clipper ships; secondly, of the Pacific Mail Steamship Company, and it was not until, I think, 1878, that we made very much of an impression on that business, and it was accomplished only by contracts. Take a large importer, as he was called. Every man that imported, that got his goods from the east, in San Francisco, was called an importer in those days. We made a contract—when we started we went to a large dealer who we found from the records was shipping a certain percentage or a large percentage of his business via the sea, the Clipper ships another percentage, because the time was shorter by the Pacific Mail, and a very small percentage by rail; and taking up these merchants individually we figured on his insurance and the interest for the difference in time and then considered whether we could undertake, by the aid of our connections east, to contract with him for all his business at an average
538 rate which would be equal to his average cost as he was then shipping it. Well, my experience was that in very nearly every case the average was so low that we could not meet it, but the merchants would add 25, and sometimes 40 per cent, to the rate and say: "There are advantages that we cannot express to you that we realize in shipping it by rail;" and one by one we made those contracts. They were not private contracts; they were open public contracts. Anybody could make the contract, and there was no law against it in those days; and that was the scheme and the method used by which we made our first inroads into the movement of the tonnage by the sea.

Q. During the time of the ocean competition the Morgan Line in connection with the Southern Pacific was an important factor in the competition from Atlantic seaports to California points?

A. Not at that time.

Q. Well, afterwards it was.

A. Afterwards, yes.

Q. Prior to 1901?

A. Yes, sir.

Q. And for many years the Southern Pacific and the Morgan Line was an important factor in that competition?

A. I should think so; yes, sir.

Q. And you represented that line?

A. Yes, sir.

Q. And in those meetings that you had, traffic meetings, you were opposed by the Union Pacific, were you not, as to the basis of rates west of New York?

A. You mean from this territory?

Q. No, the territory west of New York and east of Pitts-
539 burg, and west, even, of Pittsburg?

A. I do not think so.

Q. You do not think so?

A. No.

Q. Well, prior to the Interstate Commerce law there was a transcontinental pool, was there not?

A. Sometimes.

Q. At times there was?

A. Yes, sir.

Q. In which the transcontinental roads took a certain percentage of the business?

A. Yes, sir. They divided all that transcontinental business; divided it all.

Q. Oh, certainly the transcontinental lines divided it all. The Southern Pacific had a percentage of that business, did it not?

A. Well, I suppose when you say the Southern Pacific, you mean that Sunset route?

Q. I mean the Sunset route, including the Morgan line of steamships.

A. I would not be sure about that.

Q. Isn't it a fact, Mr. Stubbs—let me refresh your memory.

A. I wish you would.

Q. Isn't it a fact that at one time the Southern Pacific or the Sunset route had twenty-one or twenty-three per cent, and the Union Pacific thirty per cent, and that you insisted in a traffic meeting that the Southern Pacific should have an additional—should have up to twenty-three per cent, and the Union Pacific opposed it?

A. Well, it is too far back for me to remember.

Q. Well, you remember the pool, don't you?

A. I do not remember that pool that you have in mind. I know that from time to time we had arrangements that we called pools, and I think properly called pools. They were ineffective. We divided the traffic between us.

Q. And you had percentages for each line?

540 A. Yes, sir, I think so.

Q. And the Southern Pacific participated in that?

A. I think so.

Q. And had a percentage?

A. I think so.

Q. And the Union Pacific had a percentage of the transcontinental business?

A. I think so.

Q. Then they were competing for this business, were you not?

A. Yes.

Q. And during those days the Union Pacific and the Southern Pacific, when you were with the Southern Pacific, were sharp competitors for the transcontinental business, were they not?

A. The Union Pacific was not.

Q. Well, it was a competitor for that business?

A. It was seeking that business, but it was a connection of the Southern Pacific.

Q. It was a competitor with the Southern Pacific for that business?

A. It was part of the line that was competing for that.

Q. It was a link in the competition?
A. Yes, a small link.
Q. Well, a thousand miles, wasn't it?
A. Yes.
Q. And it had about thirty per cent——
A. It had carried it 1032 miles.
Q. It had about thirty percent of the transcontinental business?
A. I would not remember it, I cannot remember what it was so as to give any information.
Q. You have some information?
A. Not the slightest.
Q. It had as much as the Southern Pacific?
541 A. Well, I should say that the line made by the Union Pacific and Southern Pacific, as against the Southern Pacific El Paso line would have more, because it has always taken and can today and always will take a larger percentage of the total business.
Q. Now during those days the Southern Pacific had its own freight solicitors or commercial agents in all the large cities of the country, didn't it?
A. What days?
Q. Prior to 1901, general agents.
A. It had I think from about 1888, it had an agent in Pittsburg and a general western agent in Chicago, and I think an agent in St. Louis and an agent in Cincinnati.
Q. Are you speaking of the Southern Pacific?
A. Yes, sir.
Q. Prior to 1901 that is?
A. Yes.
Q. Prior to 1901 it had a General Agent or a traffic official in New York, didn't it?
A. Well, it had in New York and Boston. I thought you were alluding to this territory.
Q. Oh no.
A. New York, Boston, Philadelphia and Baltimore.
Q. It had one in Cincinnati?
A. Yes.
Q. Chicago?
A. Yes.
Q. Des Moines, Iowa?
A. Not as far as I know.
Q. And Detroit, Michigan?
A. No.
Q. And Kansas City, Missouri?
A. I think not.
Q. At Pittsburg it had?
A. Yes.
Q. Buffalo?
A. I think not.
Q. Portland, Oregon?

A. I think at one time they may have had a passenger agent in Buffalo.

Q. It had one in Portland, Oregon?

A. Yes.

Q. And in San Francisco?

A. Yes.

542 Q. And in all the important points out West?

A. Yes.

Q. It had one in St. Louis?

A. Yes, I stated that.

Q. Can you furnish us a list of the commercial agents, the freight or passenger agents, whatever you call them, in the large cities prior to the acquisition of the Southern Pacific by the Union Pacific, in the cities off its line of road? I mean the principal cities not connected with its line of road?

A. I think I can give them to you from memory.

Q. You have given some of them?

A. I think I have given you all of them.

Q. Those agents were not at the same time agents of the Union Pacific, were they?

A. No.

Q. They had their agents in the same cities?

A. I don't know as to that, I know they had in some.

Q. They had in Chicago?

A. I think so.

Q. In Pittsburg?

A. I think so.

Q. In New York?

A. Yes.

Q. Boston?

A. Yes.

Q. Buffalo?

A. I do not know as to Buffalo.

Q. And in St. Louis?

A. Yes.

Q. And in a good many other places, didn't they, in Portland, Oregon?

A. I think not.

Q. They have no general agent in Portland?

A. I think the Navigation Company represented them there.

Q. Well, the Navigation Company I mean?

A. Of course, that was its headquarters.

Q. Well, now, your men were at that time actively engaged in soliciting business for your line alone, were they not?

A. The Southern Pacific?

543 Q. Yes.

A. That was part of their business.

Q. That was part of their business?

A. Yes.

Q. Trying to get all they could?

A. Yes, for all its line. Don't forget it had a line from Ogden, west.

Q. I have not forgotten it at all, Mr. Stubbs. Business via water lines also moved from the seaboard points via Panama, and the Southern Pacific's line of steamers from Panama to San Francisco, didn't it?

A. I did not know the Southern Pacific had a line of steamers.

Q. I mean the Pacific Mail had a line.

A. Yes.

Q. The Southern Pacific owns the control of the stock, doesn't it?

A. I have understood that it owns fifty-one per cent of the stock of the Pacific Mail, but how long it has owned it I don't know.

Q. That was a line over which freight was transported in competition with the other lines, was it not?

A. Yes.

Q. And the Clipper lines around the Horn?

A. Through the Straits of Magellan.

Q. About what time was it that you became the traffic director of the Union Pacific Railroad?

A. I think the appointment dates from July 1st, 1901, but the office did not become organized and effective until perhaps late in 1902, because of my illness. I was very ill.

Q. Since 1903, then, you have been traffic director of the Union and Southern Pacific and their allied lines?

A. Yes, you might state it to be more accurate, since 1902.

Q. Well since 1902, that is near enough. Now you say that
544 you are not a traffic director of the Texas lines, the lines in Texas. The Southern Pacific Company owns the stock and controls through stock ownership, the Texas lines, I believe?

A. Well I do not know the fact.

Q. You understand that to be the fact, don't you?

A. I believe it to be the fact.

Q. I don't think there is any doubt about it. Those lines have separate organizations, have they not?

A. They have.

Q. Mr. E. H. Harriman is president of those lines, isn't he?

A. If you give me the guide, I can answer you. No, he is not.

Q. Well, he is president of the Galveston, Harrisburg & San Antonio?

A. I don't know. Is he, Judge?

Mr. Lovett. Yes.

Mr. Severance. Judge Lovett is president of one of them.

Q. The Texas & New Orleans Railroad he is president of?

A. Really, I would have to have the books in order to answer that. He is president of some of them.

Q. You understand that the Southern Pacific controls those lines and that they are a part of its system?

A. No, sir, I understand so far as traffic matters are concerned, quite the contrary.

Q. You have charge of the through traffic east and west over those lines from New Orleans to San Francisco, don't you?

Mr. LOVETT. If you wish the record to appear here on that, as a matter of fact the Southern Pacific owns practically all of the stock of the lines in Texas known as the Southern Pacific lines. The railroads are managed, however, by their own organization.

A. I think it would be a fair answer to say yes to that, although I do not control, except as a connection, the business
545 that would originate in Texas. I desire simply to give you the facts in the case.

Q. As a system competing for Eastern and Western traffic that goes over those lines from New Orleans each way, you have charge of that through traffic?

A. Practically, but no more than I would have under the conditions such as if the Southern Pacific Company had no ownership in the Texas lines; simply because of my jurisdiction over both ends of the road.

Q. When you are in a meeting considering the question of a through rate from New York to San Francisco, you don't have to wait to call up a man down in San Antonio, Texas, to know whether you shall make it or not, do you?

A. No, I do not make those rates.

Q. Well you have something to do with them?

A. If there was perhaps any dispute in reference to the higher traffic officers, it might come to me.

Q. You generally have charge of the subject of rates and represent all of those lines on that subject?

A. In a general way, so far as they interchange traffic.

Q. Who are your assistant traffic directors?

A. Mr. E. O. McCormick and Mr. Storr.

Q. Mr. P. C. Storr?

A. Mr. P. C. Storr.

Q. They have jurisdiction over the entire systems under your direction?

A. Just as far as mine.

Q. Is their jurisdiction divided between passenger and freight?

A. No.

Q. Does one of them have particular charge of passenger traffic?

546 A. Well, it is my habit to refer passenger matters to Mr. McCormick, because he knows more about it than I do, and I think he knows more than Storr does, but he also handles freight or takes anything that comes up.

Q. Now, when you finally organized your Traffic Department, you made a great many changes in the system of the two systems, did you not?

A. Not many.

Q. Well, what did you make?

A. The only change that I recall, as resulting from the new control, was that I consolidated the agencies in Chicago, in St. Louis, and in Pittsburg, and in Cincinnati.

Q. Previous to that time in Chicago, Mr. Neimeyer had been your local agent?

A. He was general western agent.

Q. What jurisdiction did he have, what was his business?

A. Well, he had charge of this territory here, and I think he also exercised supervision over the Cincinnati and Pittsburg officers.

Q. And Detroit?

A. No. There was no Detroit agent, that was established after I came here.

Q. That is prior to your coming here he had this jurisdiction?

A. I think he has it today.

Q. Well now today he has charge of the Southern and Union Pacific also,—the Union Pacific also had an agent here in Chicago, at that time, didn't they?

A. Yes.

Q. And kept a separate office?

A. Not after I had consolidated them.

Q. I mean before that.

A. Yes.

Q. A separate general agent and a separate office?

A. Yes.

547 Q. Separate solicitors of freight, and an entire organization, which was separate?

A. I do not know how many solicitors they had, or I don't know that they had any.

Q. Presumably they would have?

A. I think it is likely.

Q. You consolidated them, and put Mr. Niemeyer at the head?

A. Yes, sir.

Q. So that the two systems only have one Chicago office?

A. Yes.

Q. What is Mr. Niemeyer's business now?

A. I think the same as before. I think that the Cincinnati agency, and the Pittsburg agency report to him, and I think the Detroit agency does.

Q. Well, is all the intervening territory what is called his territory?

A. Well, I cannot give you that information, but each one of these centres takes a certain territory.

Q. The intervening territory is covered when necessary by freight solicitors under the jurisdiction of Mr. Niemeyer, or agents of his?

A. Yes.

Q. So that really his jurisdiction extends as far east as Pittsburg?

A. Yes.

Q. And as far north as Detroit, and as far south as the Ohio River?

A. Yes.

Q. And west to the Mississippi?

A. Yes.

Q. Or to Omaha, or as far as Omaha?

A. I think not. I think he don't go west of the Mississippi River.

Q. Now through his agency or his solicitors, they look after and solicit traffic for the two systems, do they not, in competition with other lines?

A. Yes.

548 Q. There is a certain amount of that traffic that he can route either way he pleases, isn't there?

A. No.

Q. None of it whatever?

A. I think very little, I think it is safe to say no.

Q. Do you wish to be understood as saying that there is no traffic whatever that Mr. Niemeyer can route in any direction at all?

A. I do not say that there is no traffic whatever he cannot change.

Q. Then there must be some?

A. Wait till I have finished my statement. I do not think that Mr. Niemeyer controls the direction of any traffic or any agent that the Southern Pacific has. He must work with the connection, the connection which originates the traffic, dominates and controls the routing of it.

Q. There is a certain amount of traffic that Mr. Niemeyer or his agents soliciting in this territory between here and Pittsburg, or the Mississippi River and Pittsburg can route via either Southern Pacific or Union Pacific?

A. That is where I disagree with you.

Q. You say there is not?

A. I do not think there is any that it is at all important in amount.

Q. Well there is some, isn't there?

A. I would not say that, because I do not know.

Q. You do not know whether there is any?

A. I think it is very doubtful. I think you have a mistaken idea as to the purpose of these agencies, and as to their influences.

549 Q. What is his business?

A. I have described it already.

Q. Well what is his business?

A. His business is to represent these lines here in relation to the public, and in relation to the connecting lines, and in every way that we need him.

Q. If the dictating of the route of the traffic is entirely in the hands of the other lines, the connections, why do you need a general agent in Chicago?

A. To work with the other lines.

Q. To work with the other lines?

A. Yes.

Q. And get traffic from them?
A. Yes.
Q. Does not your solicitor visit the wholesale houses?
A. Yes.
Q. The commercial houses?
A. Yes.
Q. In order to get freight to be shipped by your lines?
A. I think not, not originally. I mean to say that they cannot control the routing of any traffic to any extent against the will of the originating line.
Q. I am not stating that; I am asking you if there is not a certain amount of free traffic that your solicitors get from shippers, where the route is either via the Ogden gateway, or via the Southern Pacific?
A. Well, I have already answered that question. I believe that if there is any of that traffic that it is very small in its amount. You will have Mr. Niemeyer on the stand, and you can get that information from him.
Q. Well now, these various solicitors of yours, Mr. Niemeyer, who solicit freight to be routed.—they solicit freight to be
550 routed over your line as against the Sante Fe and the Northern Pacific, do they not?
A. Yes.
Q. And they succeed, do they not?
A. Why, I think they are useful; yes.
Q. Then they must get some traffic, which they influence to go over your line, instead of the Santa Fe?
A. I do not mean to say that their influence is not good and effective, but what I wish to be understood as saying is, that it is not conclusive, and that they cannot do it as against the influence of the connecting line, the originating line.
Q. Then if the entire business is in the hands of the originating line, what is the object of your commercial agent soliciting as against the Santa Fe or the Rock Island, or the Northern Pacific?
A. I want to watch the originating line, and see that he treats us right.
Q. That is all you have them for, then, as watchers of the originating line?
A. Watchers and solicitors of the originating line, keeping up our connection with them.
Q. Then, according to your views, there is no competition whatever between any line from the east for the coast trade?
A. Well, have I said so?
Q. Is it true, doesn't that follow?
A. Have you asked me that question?
Q. Yes.
A. My answer to that is No.
Q. There is no competition?

A. My answer to that question would be, Yes, there is plenty of competition.

551 Q. There is strong competition between the lines for the transcontinental business, isn't there?

A. Yes.

Q. Don't your agent participate in that competition?

A. Yes, they assist.

Q. And they are factors in the struggle for business for the Union and Southern Pacific?

A. Yes.

Q. As against the other lines?

A. Yes, competitors of the Southern Pacific.

Q. As against the competitors of the Southern and Union Pacific, but as between the Southern Pacific and the Union Pacific, Mr. Niemeyer is not competing for one, as against the other, is he?

A. Just as much to-day as ever.

Q. Do you mean to say they never were?

A. Yes.

Q. When Mr. Niemeyer was here, representing the Southern Pacific alone, and the Union Pacific had their agent representing the Union Pacific——

A. I will qualify that. He differs in this respect: Mr. Niemeyer has always worked for the Ogden route.

Q. Exclusively?

A. Yes, practically. That is so far as his own influence goes, and his instructions were to do that. If he would—but he would work just as freely with the Rio Grande as he would with the Union Pacific. If he found that he could aid the Union Pacific and the Union Pacific had originated the business, he would work with them; if it was the Rio Grande he would work for them.

Q. He never worked for the New Orleans route?

A. No, sir; I don't believe so. If he did he disobeyed instructions.

552 Q. His instructions were, prior to 1901, at all times to work the traffic exclusively——

A. From this territory, yes.

Q. That is not the case with the man at Pittsburg, is it?

A. Well, I am not sure about that; I think his instructions were to work either.

Q. To work either?

A. Yes.

Q. But he was working for the Southern Pacific?

A. Yes.

Q. The Union Pacific also had an agent?

A. Yes.

Q. And that man was working for the Union Pacific alone?

A. Yes.

Q. He was not working for the Sunset route?

A. He was working for the Southern Pacific. I want to correct that statement. You say that man was working for the Union Pacific alone. He could not work for the Union Pacific without working for the Southern Pacific.

Q. He was not working for the Sunset route via New Orleans?

A. No.

Q. And your man was?

A. Well, incidentally, yes.

Q. Now, there was only one man there?

A. That is right.

Q. That man is not competing with himself, is he?

A. Yes.

Q. He is?

A. He might be. If he found that the lines leading from Pittsburg to New Orleans were working a certain line of traffic, he would help that line. On the contrary, if he found they were working it direct via Chicago or St. Louis over the Union Pacific, he would work that line.

Q. When he was working the Union Pacific he could not be working the Southern Pacific, at the same time, as to the same traffic?

A. No, he could not be effective. He would be simply
553 doing incidentally what the two agents would be doing under like conditions and circumstances.

Q. Except they were not competing—he was not competing with himself?

A. Well, the competition is originated, represented, created, fostered and promoted by the initial line. The influence of the Southern Pacific in this territory, against any of its connections, and the Union Pacific alike would be if exercised against one of its connections in favor of another, disastrous, and the consequences would be very serious.

Q. Will you tell me whether it is true or not——

A. I know what your theory is, and perhaps it is pretty hard to convince you to the contrary, but I am giving you the facts as I see them.

Q. I understand what you are giving me exactly, I think. Will you tell me whether the Pacific lines, the Northern Pacific is competing with the Union and Southern Pacific, and how they do compete for transcontinental business?

A. Why, I think so.

Q. How do they do it?

A. In every known way.

Q. Name them, we want to find out.

A. They do it through their officers, they do it through their service, they do it through their soliciting agents, and they do it in a thousand and one ways.

Q. And you do it in the same way as against them?

A. Yes.

Q. You do it yourself by looking after the general traffic, don't you?

A. Yes.

Q. And your assistants do it by looking after the Union and Southern Pacific?

A. Yes.

Q. And your General Freight Agents do it by looking after
554 the Union and Southern Pacific?

A. That is, you are speaking now about our competing with the Northern Pacific.

Q. Yes.

A. Yes.

Q. And your soliciting agents throughout all the United States, where they are after traffic are hustling against the Northern Pacific?

A. I think so.

Q. Now, where you have joint agents, joint traffic officials, joint assistant traffic officials, having charge of the Union and Southern Pacific in the same place, will you tell me how they can compete with themselves? If you can, I would like to be enlightened.

A. Well, I would not put it in that way, that they were competing with themselves. That is the first answer. The second answer is that the Union Pacific is a connection of the Southern Pacific and in many cases and with respect to such territory it is to the interests of the Southern Pacific that the business should move via Ogden over the Union Pacific, because it would get a larger net out of the rate. Now there may be some exceptions to that with respect to the Pittsburg territory, and territory west.

Q. East, you mean?

A. No, west. As to the Atlantic seaboard territory, where the competition is the most rife and most effective, the conditions today are just as they always were. They have separate joint agents at New York, separate general agents at Boston, separate general agents at Philadelphia, and I think they have separate general agents at
Baltimore, and they work that territory just as independently
555 as they ever did.

Q. Then you don't mean to say that you and your traffic directors and the joint agents who represent the two, are or can be competing with themselves, you don't pretend to say that?

A. I do not see the point of your question.

Q. Oh, you don't.

A. I have explained it as best I can, the facts with resepect to these agents that we have been talking about. Now if you have a theory of your own and want to establish it by my testimony, I do not believe that I can go as far as you may want me to.

Q. You did state that the Northern Pacific and the Union and Southern Pacific were competing through the traffic officers, assistant traffic officials as well as general agents?

A. Now, will you let me interrupt you there?

Q. No, you said that, didn't you?

A. I said in that way— Of course I am not an authority on what the Great Northern and Northern Pacific is doing.

Q. They don't have common traffic officials and common traffic directors and common freight solicitors in certain places, and those particular officers are not competing with each other, are they?

A. Well, but you forget a vital fact.

Q. Is that true, or is it not?

A. I will answer it in my own way. You forget the whole fact that the Union Pacific is a connection of the Southern Pacific.

Q. I have not forgotten it at all.

A. I think there cannot possibly be said to be a competition
556 between the Union Pacific and the Southern Pacific for California business.

Q. There never was, was there?

A. According to my theory, no.

Q. Then why did the Union Pacific have thirty per cent in the pool, and the Southern Pacific twenty-one per cent?

A. I don't recall what the pool was, but you must remember if there was a pool that it involved other lines. They had to divide it that way, if that was so.

Q. As to your eastern agents, you say they are competing as actively as ever in New York and Boston?

A. I said so, yes.

Q. If the two lines are not competing, how are they competing?

A. Well, possibly you are juggling with words, and I should be more careful in my answer.

Q. No, I am not at all.

A. You said they are competing. What I said was this: That with respect to the Atlantic seaboard business, that the conditions today in the matter of two representatives were the same as before 1901 that you speak of, that the Union Pacific had its general agents there soliciting or working in aid of its connections, and watching its conections, and the Southern Pacific still had its agents, its general agents there, but the Southern Pacific is the initial line there, while the Union Pacific is not; but even the Union Pacific, all the endeavor of the Union Pacific general agencies in this Atlantic seaboard system, must contribute to the Southern Pacific because
557 they cannot get into California otherwise, and really you might say that the agency was practically joint.

Q. They are practically joint, are they not?

A. They are not, but I say that you might say because in helping their own line—the Union Pacific—they cannot fail to help the Southern Pacific, that they are.

Q. I understand your theory.

A. Well, my fact you mean.

Q. Then they are competing in this way; that if the Southern Pacific man gets freight in New York, the Southern Pacific gets the whole transportation to San Francisco, does it not, via the Morgan Line and Sunset Route?

A. The Southern Pacific, except for that little link, between Galveston and El Paso. The G. H. & S. A. gets it there.

Q. It owns the stock of that line, does it not?

A. I have heard Judge Lovett say that it did.

Q. Then, if that is true, the Southern Pacific gets the entire charge, does it not, for the haul?

A. Eventually, yes.

Q. If the Union Pacific agent gets it, the Southern Pacific gets the haul from Ogden to San Francisco?

A. That is right.

Q. And the Union Pacific gets 1032 miles from Council Bluffs?

A. It did once, it gets 1003 miles now.

Q. Well, you have shortened the line. It is from Council Bluffs to Ogden, isn't that true?

A. Yes.

Q. As to that, there is competition as between the agents, is there?

A. As to that seaboard business, yes. That is, there is competition between the agents in so far as the line from New York to San Francisco via Ogden is concerned, and the line from New
558 York via Galveston, and El Paso, but the competition is a line competition. You might draw the Union Pacific agency out of New York I think today, and I think it would not affect the volume of business which the Union Pacific gets with respect to this transcontinental traffic.

Q. Why don't you do it then?

A. Well, I may. I have not quite got to that yet.

Q. I suppose the public interest is not considered, it is simply a question of the volume of traffic that the Union and Southern Pacific can get?

A. You have not given me an opportunity to say it yet, but in establishing this general agency in Chicago, and these agencies I have named, and even in New York, so far as the Union Pacific is concerned, the solicitation of traffic was to my mind a small part of their duties, a small part of it. Now, when I established the joint agency here in Chicago, the main reason for doing it——

Mr. MILBURN. For the Southern Pacific?

WITNESS. For the Southern Pacific. That is before I had anything to do with the Union Pacific. The main reason was that I was over 2,000 miles away from Chicago and the headquarters of all our competitors and of our connections practically, were at Chicago. I had no means of communication with them, except by letter or by wire. I wanted someone here that belonged to me or to my railroad company to have his finger upon the traffic pulse and the management and doings of our connections, and our competitors. Now that was primarily the reason for establishing the joint agency in Chicago.

Q. You wanted somebody who owed allegiance to the South-
559 ern Pacific alone?

A. That is to be eyes and ears for me. I will give it to you in full, the facts. I sent him here for the purpose of inter-

course with the officers of these lines that could not be very readily, or as fully accomplished in any other way. Furthermore I sent him here, or established the agency here as an advertising agency. I did not propose to be the tail to the Union Pacific kite, or any other company's kite. I wanted the Southern Pacific's sign up here.

Q. That has been taken down?

A. No, it has not.

Q. It has been consolidated?

A. Yes, you may say so, but the conditions then were very different from the conditions today. California was, comparatively speaking, unknown. It had not been advertised, the advertisement had not been as fully distributed. I wanted this agency here to distribute our advertising matter. I could not trust our connections to do that as fully, and we were spending and had spent millions of dollars in advertising California. Now these items and these considerations that I have mentioned to you were not subordinate to the matter of soliciting business, but they were principal, and the solicitation of business was subordinate to them.

Q. In other words, you did not propose to leave the Union Pacific, as merely a connecting line, to represent you in the East and in Chicago?

A. In those days, yes.

Q. You could get freight from the Denver & Rio Grande and its connections, as well as the Union Pacific, could you not?

A. Why, we did get it, and we do get it today.

Q. Therefore, you thought it was for the interest of the
560 Southern Pacific to have a separate representative in Chicago?

A. I did.

Q. But you think that necessity has passed away?

A. Why I think so, yes.

Q. And that the Union and Southern Pacific, now together——

A. Not altogether on account of the joinder of interests, but the changed conditions.

Q. Now that necessity seems to have passed away at the same time the Union Pacific got control of the Southern Pacific stock, isn't that true?

A. Well, it would be apparently so, but no, as a matter of fact. No, the joinder of agencies would have nothing to do with it today.

Q. Let me ask you. Did you prior to the acquisition of the stock of the Union and Southern Pacific have one single joint agency in any of these large cities for soliciting business?

A. Not at the time, but once we did join with them in New York City.

Q. You did not have such at that time, and had not for several years before?

A. No, but we had a joint agency with the Union Pacific for many years in New York.

Q. But you had not for many years before this, many years, before 1901?

A. For the reasons that I have stated to you, we thought it best to establish our independent agencies.

Q. It did not have one common traffic official or officer?

A. I do not know of one.

561 Q. It now has a common president, vice-president, traffic officials and assistant traffic officials, and directors of maintenance and operation, has it not?

A. I will answer that in detail.

Q. No. Have I named any officials that are not common?

A. What the Commission wants are the facts.

Q. Certainly.

A. Well, I will give the Commission the facts as I understand them.

Q. All right, sir.

A. I understand that Mr. Harriman is president of each one of those lines today. That was not true when I came to Chicago.

Q. Well, it is now.

A. I understand that the director of purchases and supplies is the same for all these lines; that the director of maintenance and operation, Mr. Kruttschnitt, is the same, and that the Traffic Director is the same, the officers here. I also understand that each one of these companies, the Navigation Company, the Short Line, the Union Pacific and the Southern Pacific, as well as the Morgan Line and the Louisiana and Western Line, have their separate set of operating officers having their headquarters respectively at San Francisco, at Portland, at Salt Lake City, at Omaha and at New Orleans and that those officers, separate officers are charged with the immediate and direct management of these lines both as to operation and as to traffic and so far as the traffic is concerned that my relation to them is only supervisory.

Q. Now all of these freight agents and traffic officials report to you, don't they?

A. The general officers do.

Q. Mr. Munroe, who is the traffic manager of the Union
562 Pacific, reports to you?

A. Yes.

Q. How far west does his jurisdiction go?

A. Well, the Union Pacific road runs to Ogden.

Q. Where does his jurisdiction end, at Ogden, or at Green River?

A. Green River, I believe.

Q. Well now, from Green River west Mr. Bancroft has charge of operations?

A. Well, I am not so sure. I think it will be found that Mr. Reeves, who is general freight agent of the Short Line, also handles the line from Green River to Ogden, subject to Mr. Munroe and he has the immediate management of it.

Q. That is, Mr. Munroe's jurisdiction extends to Green River?

A. Well, did I say that now? [illegible] don't want to try to make me say something I did not. I would not be certain about it. Mr. Munroe will be on the stand, and he can tell you.

Q. Who is the traffic official of the Short Line?

A. Mr. John A. Reeves is the general freight agent.

Q. Well now, John A. Reeves, his jurisdiction extends from Green River on the Union Pacific to where?

A. Well, it extends from Salt Lake City to Butte, or to Silver Bow, and it extends west to Huntington and it extends west also on the Central Pacific line to Sparks.

Q. That is the Southern Pacific line, isn't it?

A. Yes.

Q. Then this freight agent——

A. Now let me explain that.

Q. All right, explain it.

A. His jurisdiction over the Central Pacific is subordinate to Mr. H. H. Jones, who is freight traffic manager of the Southern Pacific with headquarters at San Francisco.

Q. And that man is subject to your jurisdiction?

A. Yes.

563 Q. Now then, what is this man's name at Salt Lake?

A. Mr. Reeves.

Q. And he has jurisdiction over part of the Union Pacific and of the Short Line, and of the Southern Pacific as far west as Sparks?

A. Sparks.

Q. How far west of Ogden is that?

A. A little over 600 miles.

Q. In the written instructions given him, was it stated that as to the Southern Pacific line he was subject to—what was the other man's name?

A. You mean Mr. Jones.

Q. Mr. Jones.

A. If I recollect right his circular of appointment is approved by Mr. Jones.

Q. Who issued that circular of appointment, you?

A. I think so.

Q. Will you get us the circular appointing, or changing the appointments of all the freight agents and traffic officials, so we can see exactly what they contain?

A. Well, I think I can get you all that have been published since I have been here. That is what you want?

Q. Yes. Now this freight agent at Portland then has charge of the Southern Pacific line in Oregon and of the Navigation Line in Oregon, has he not?

A. Yes, but he is subject to the Southern Pacific freight traffic manager with respect to the lines in Oregon.

Q. He is subject to you?

A. Yes.

Q. So that ultimately you get back to same head?

A. That is right.

Q. And the systems are divided up, the Union Pacific and
564 Southern Pacific, irrespective of the mileage owned by each corporation, are they not, in that way?

A. You mean that they have common officers?

Q. Common freight agents over certain parts of their lines irrespective of the mileage owned by each corporation.

A. Well, if I understand your question, yes.

Q. So this separate organization laps over on to the Southern Pacific line and all of its heads in you as the common traffic official of both lines?

A. That is right.

Q. All of these general freight agents then of these various lines report to you?

A. Where there is not a freight traffic manager, or a higher local officer, yes.

Q. That is, the highest traffic officer of each line reports to you?

A. Yes, that is right.

Q. Now, who is the freight agent in charge of the Union Pacific—of the Oregon Railway and Navigation and the Southern Pacific line in Oregon?

A. R. B. Miller is the general freight agent, of the Oregon Railway & Navigation Company, and also of the Southern Pacific lines in Oregon, but with respect to the latter he is subject to H. H. Jones, who is freight traffic manager of the Southern Pacific Companies Pacific system.

Q. Who appointed him.

A. I did.

Q. You appointed him for the Southern Pacific, and for the Navigation Company, both of them?

A. Well, I think I was wrong in saying that I appointed him as general freight agent of the O. R. & N. I think Mr. Campbell appointed him general freight agent of the O. R. & N., but I put him in charge of the Southern Pacific lines in Oregon.

565 Q. Who has charge of the steamship line from Portland to San Francisco?

A. I think Mr. Schwerin has.

Q. He also has charge of all the other steamship lines?

A. Well, he is practically the managing officer of all our steamship lines on the Pacific.

Q. Both Union and Southern Pacific?

A. Yes, that is my understanding.

Q. So that your steamship lines are under one general management?

A. Practically.

Q. Now, Mr. Stubbs, do you remember the Graham case pending in the United States Court in New York against the O. R. & N.?

A. Yes, I remember the case, but I don't remember the facts of the case. I was very remotely connected with it. I believe I was put

on the stand with respect to some statement that Graham made as to advice that I had given him in a letter as to what the divisions of the trans-Pacific rates were, but as to the dispute between Graham and our people, in its detail, I know very little about it.

Q. Did you testify in that case, Mr. Stubbs, as a witness?

A. According to my recollection, as to this particular fact.

Q. Did you say as follows: "My relations with Mr. Graham, so far as I can recall, and I believe I do recall them, were wholly with respect to his interests in the Coos Bay region. I dealt with him in the movement of freight by way of our line, that is the Southern Pacific line to Roseburg. I could hardly be any authority or advisor to him with respect to contracts for the steamship connection with the Oregon Railway & Navigation Company in the way of
566 giving him information or advice, because that line was directly opposed to the interests I represented and a competitor to the lines via San Francisco?"

A. Possibly I said that.

Q. That was before the time of the Union and Southern Pacific joint control that is, that you were referring to?

A. Yes.

Q. Did you also testify: "I would undertake to say that it is very unlikely that he would have asked me about them or either of them. The relations of the Southern Pacific with the Pacific Mail, and the relations of the O. R. & N. with the Doddwell Lines, because as I have explained, the two lines were diametrically opposed to each other, and competing vigorously every day in the year." ?

A. I think so.

Q. You testified to that?

A. I think so.

Q. That is that the Oregon Railway & Navigation Company in connection with the Doddwell Line and the Southern Pacific and its line were competing vigorously every day in the year?

A. That is for trans-Pacific business.

Q. For trans-Pacific business?

A. Yes, sir, and they are doing it today.

Q. Then they are competitors, are they?

A. In that sense, yes.

Q. On the trans-Pacific business?

A. In that sense, yes.

Q. From the Pacific coast points to the Atlantic Coast points?

A. The Union Pacific participates in both lines, don't forget that.

Q. The Southern Pacific does not participate in business coming off the Doddwell Line, does it?

(A recess was taken until 2 o'clock p. m.)

Q. Mr. Stubbs, I show a list of your joint agents, freight and passenger, so far as named in various places, and ask you
567 if that is substantially correct? (Presenting paper to witness.) If you desire, you can check it over during the afternoon and hand it in later, unless you know offhand.

Commissioner HARLAN. You have not named the roads, Mr. Kellogg.

Mr. KELLOGG. The Union Pacific and Southern Pacific; a list of joint agents in various places.

A. (After examining list.) I think that is practically correct, as I read it over. I do not know who these traveling agents are. I do not appoint them.

A paper was marked Complainant's Exhibit 74 (Stubbs).

Mr. SEVERANCE. It is admitted that Complainant's Exhibit 74 (Stubbs) is a correct copy of the list of agents examined by Mr. Stubbs and pronounced by him as correct, and the same is printed in the book of exhibits record of Interstate Commerce Commission as Stubb's Exhibit 1, pages 121 to 123 inclusive.

I offer Complainant's Exhibit 74 (Stubbs) in evidence.

Complainant's Exhibit 74 (Stubbs) is as follows:

COMPLAINANT'S EXHIBIT 74. (Stubbs.)

Atlanta, Ga.
UP—J. F. Rensselaer, General Agent.
SP—J. F. Rensselaer, General Agent.
Other agents the same.
Offices the same place.

568 Chicago, Ill.
UP—W. G. Neimyer, General Agent.
SP—W. G. Neimyer, General Agent.
Other agents the same.
Offices the same place.

Cincinnati, Ohio.
UP—W. H. Connor, General Agent.
SP—W. H. Connor, General Agent.
Other agents the same.
Offices the same place.

Des Moines, Iowa.
UP—J. W. Turtle, Trav. Pass. Agt.
SP—J. W. Turtle, Trav. Pass. Agt.
Offices the same place.

Detroit, Mich.
UP—F. B. Choate, General Agent.
SP—F. B. Choate, General Agent.
Other offices the same.
Offices the same place.

Kansas City, Mo.
UP—H. G. Kaill, Asst. Gen. Frt. & Pass. Agt.
SP—H. G. Kaill, Asst. Gen. Frt. & Pass. Agt.
Other agents the same.
Offices the same place.

Pittsburg, Pa.
UP—G. G. Herring, General Agent.
569 SP—G. G. Herring, General Agent.
Other agents the same.
Offices at same place.

Portland, Oregon.
UP—Wm. McMurray, Gen. Pass. Agt.
OR&N { R. B. Miller, General Freight Agent.
Wm. McMurray, General Pass. Agent.
SP { R. B. Miller, Gen. Frt. Agt. Lines in Oregon.
Wm. McMurray, Gen. Pass. Agt. Lines in Oregon.

St. Louis, Mo.
UP—L. E. Townsley, General Agent.
SP—L. E. Townsley, General Agent.
Other agents the same.
Offices at same place.

St. Paul, Minn.
UP—H. F. Carter, Trav. Pass. Agt.
SP—H. F. Carter, Trav. Pass. Agt.
Offices at same place.

Salt Lake City, Utah.
UP { D. R. Gray, General Agent.
D. E. Burley, Gen. Pass. Agt.
OSL—D. R. Gray, D. F. & P. A.
SP—D. R. Gray, D. F. & P. A.

San Francisco, Cal.
UP—S. F. Booth, Gen. Agt. Pass. Dept.
OSL—S. F. Booth, Gen. Agt. Pass. Dept.
570 OR&N— { S. F. Booth, Gen. Agt. Pass. Dept.
H. O. Wilson, Gen. Agt. Frt. Dept.
SP—A. S. Mann, Dist. Pass. Agt.
All offices in Ferry Bldg.

Seattle, Wash.
UP—E. E. Ellis, General Agent.
OR&N—E. E. Ellis, General Agent.
SP—E. E. Ellis, General Agent.

Spokane, Wash.
UP—Geo. J. Mohler, General Agent.
OR&N—Geo. J. Mohler, General Agent.
SP—Not represented.

Tacoma, Wash.
UP—Robert Lee, Agent.
OR&N—Robert Lee, Agent.
SP—Robert Lee, Agent.

Toronto, Ont.
UP—J. O. Goodsell, Trav. Pass. Agt.
SP—J. O. Goodsell, Trav. Pass. Agent.

Q. Well, subject to correction, you are willing to say that is substantially correct?

A. Yes, I am willing to say it is substantially correct.

Q. Prior to the consolidation in 1901 of the management of
571 the two companies, neither the Southern Pacific nor the Union Pacific had a joint agent in either of those places, did they?

A. I think that is true.

Q. Mr. Stubbs, if there has been any particular competition between those lines since 1901, it has not evidenced itself in the reduction of rates, has it?

A. I think that whatever competition there was between those lines before 1901 and now will not be evidenced by differences in rates.

Q. You would not now permit the Southern Pacific Company to cut the rate—I mean, even by a published tariff—from the Atlantic Seaboard to the Pacific Coast for the purpose of taking freight away from the Union Pacific line, would you?

A. I would permit it as much as I would permit it for the purpose of taking the freight away from the New York Central or the Northwestern.

Q. Well, would you permit it?

A. To-day?

Q. Yes, sir.

A. I think not with respect to either one of the lines.

Q. You would not permit it to take business away from the Union Pacific?

A. Or any other——

Q. (Interrupting.) Well, I have asked you as to the Union Pacific.

A. I will say Yes, and add to it, or any other company.

Q. That is, you would permit it? You mean you would not?

A. I mean I would affirm your statement.

Q. And you would not permit the Union Pacific to cut the rates for the purpose of taking the business away from the Southern Pacific, would you?

572 A. I would not in the same sense that previous to 1901 I would not have permitted the Southern Pacific to cut the rates to take business away from the Union Pacific.

Q. Now, Mr. Stubbs, did you not use to cut the rate to and from California points by the Southern Pacific for the sake of taking business away from the Union Pacific and other lines?

A. No.

Q. As a matter of fact, in 1896, did you not have a merchandise rate to Portland from New England and New York points which you reduced 5 cents a hundred for the purpose of getting the business below the other roads?

A. I think not. I do not recall it.

Q. You do not recall it?

A. No, sir.

Q. You will not swear that it was not so?

A. To the best of my knowledge and belief, yes, sir.

Q. Will you say you never did cut the rates on the Southern Pacific for the sake of taking business away from any other line?

A. Well, it has been so long since it was done it has passed out of my mind, if it has been done.

Q. Well, how long?

A. Well, a great many years.

Q. Well, how many is a great many years?

A. It might be seventeen, fifteen or twenty—I cannot tell which.

Q. Say, seven years ago, before the acquisition of the Southern Pacific by the Union Pacific, or ten years ago, did you not at times reduce the rate or cut the rate, whichever you call it, on the Southern Pacific, or Sunset route, for the purpose of taking business away from other lines?

573 A. I think not.

Q. You think you never did?

A. I may have done it. When we first opened the Sunset route along in 1883, I think the line was opened as a differential line.

Q. But after that you have no recollection of ever having done that?

A. I have not.

Q. You always maintained the rate?

A. I think so.

Q. The published tariff rate?

A. Yes, sir. Of course, you mean by your questions to ask me whether we initiated the cut.

Q. Oh, no—whether you initiated it or not or made it with somebody else.

A. I mean the line initiating it.

Q. No, I mean the line itself or with somebody else.

A. Tell me what you do mean.

Q. Were the rates cut, your proportion or the whole on the Southern Pacific Sunset Route for the purpose of taking California business to or from California from any other line?

A. I think not.

Q. Never?

A. In 1886 there was a war of rates instituted by the Santa Fe, the management that was then in charge of the Santa Fe that involved all of the lines to California, both by the Southern and the Union Pacific routes, and I think pretty much all of the lines west of Chicago. Since that time I do not remember any cuts in rates.

Q. No cuts since 1886?

A. As against another line. The rates have been equal by all roads.

Q. And always maintained?

A. Well, I think so; measureably so.

574 Q. Not entirely maintained?

A. I could not answer as to that.

Q. Well, since 1901, all or practically all, or at least a great majority of the rates of the transcontinental freight from this territory

you named east of the Mississippi River, as covered by transcontinental freight tariff have been advanced, have they not? (Referring to tariff.)

A. As to east bound rates?

Q. As to west bound rates.

A. Wait a minute; well, no—as to west bound rates, I think in February, 1904, was it not, there was an advance undertaken, but for the most part it did not last very long; that is, the general scale was advanced by all routes.

Q. Are not the rates on a large number of commodities from the territory east of the Mississippi River, known as the Trans-Continental Freight Bureau Territory, covered by that tariff, ten cents a hundred pounds higher than they were in 1901?

A. Well, I can only repeat my former answer that in 1893 or 1894—I do not remember the date——

Q. You mean 1903 or 1904?

A. Yes, 1903 or 1904, that all the transcontinental lines in view of the increased expenses, endeavored to secure an advance, I do not know, but I think generally an advance of 12½ per cent., and tariffs were published showing that advance in rates, but my recollection is that here and there immediately the advance was recalled in respect to particular articles or particular commodities, as they were found to pinch and could not be maintained. How much of that advance has been maintained until today and is now in force, I am unable to say.

575 Q. I show you the west bound Trans-continental Freight Bureau tariff, including all the lines of railroad running west of the Mississippi River, for all business from points east of there to the Pacific Coast, with the old rate in red and the present rate in black. This has been checked up by the Commission and I believe it to be substantially correct, and I wish to know if that corresponds with your recollection of the advance?

A. I do not know. I was not in the Convention, was not in the meeting or association, or freight bureau at the time these rates were decided upon.

Mr. MILBURN. What date did you say, Mr. Kellogg?

Mr. KELLOGG. About 1903, I think.

WITNESS. I could not answer that. I was going to answer that the tariffs on file with the Commission will show the fact to the Commission. You do not need my testimony to affirm or deny it.

Q. Well, the rates generally on the Union Pacific road are substantially as high today as they were in 1901, are they not?

A. I do not know anything about what the local rates are, what changes have been made. I do not recall any material change, except a recent reduction in the rates to Utah common points, which was very material and I think some reductions with respect to Idaho points, points east of Huntington, on the Short Line. I cannot tell you as to what they were.

Q. Well, your report——

A. (Interrupting.) I believe the rates to Montana common points have also been reduced.

Q. On your line of road?

A. Yes, sir; and I believe on other lines of road also.

576 Q. The reports which you file and publish show that the rate per ton per mile all over the Union Pacific line in 1896 was 9.5 cents—no, 95/100 of a cent per ton per mile and in 1906 it was 92/100 of a cent—substantially the same. That is a pretty fair indication that the rates since 1901 have not been reduced much, is it not?

A. Well, it does not necessarily follow. There might be a change in the movement of the traffic that would work a slight difference in the average percentage.

Q. But it is a fair indication generally, is it not?

A. I should say that any material reduction on a considerable volume of traffic for a considerable period during the year would manifest itself in the average rate per ton per mile.

Q. Yes.

A. And yet month by month, if you will allow me to explain—month by month you will find on different commodities, changes in rates, in the rate per ton per mile, both advances and reductions, which are not the result of any change whatsoever in the rates, but a change in the direction or length of the haul, the average length of the haul.

Q. Oh, yes.

A. Well, it is quite material.

Q. I notice that in spite of the rate per ton per mile being substantially the same as it was ten years ago, the earnings per mile of road have nearly doubled.

A. Yes, there has been a very large increase and a very large increase in expense too.

Q. And the earnings per mile of road have nearly doubled?

A. I cannot answer as to that. I presume the reports will show it.

Q. You say there has been a very large expense, increase in

577 expense since then?

A. I think so.

Q. The ratio to total gross earnings of operating expenses—the percentage of operating expenses—to total gross earnings are much less today than they were in 1896, are they not?

A. I do not know.

Q. That is what your report shows.

A. I do not make these reports.

Q. You have a general familiarity with the traffic of the System?

A. I do not pay much attention to those questions of accounting.

Q. (Referring to memorandum.) Well, I wish to call your attention to the fact that your report shows that your rate per ton per mile is substantially the same on the Union Pacific and that the net earnings per mile have increased from $2,896 to $5,962 per mile of road.

A. Well, I will not dispute it.

Q. Very well; and that the percentage of operating expenses to gross earnings were practically 62 per cent in 1896 and 55 at the present time. Do you think that is substantially correct?

A. I will not dispute it. I cannot say. I would have to take our annual reports and look at them. I do not carry those things in my mind.

Q. (Referring to memorandum.) And that your earnings, that the Union Pacific Company has a large surplus from operating, exceeding seven million dollars after paying ten per cent. Do you know about that?

A. No, except what the annual report says.

Q. Well, you do not doubt that fact, do you? This state-
578 ment is made up by your auditor or comptroller.

A. I do not doubt it. If you have his statement, why do you want my testimony?

Q. Well, I want to ask you a question that follows it. That being the case, do you consider the transcontinental rates which are competitive between those various lines, reasonable rates, or are they pretty high?

A. I think they are reasonable.

Q. And you think the competition is just as keen today on the question of rates between the Southern Pacific and the Union Pacific as it ever was?

A. As it ever was. I not only think it; I know it.

Q. And, being at the head of both companies, you have a very good opportunity to know it?

A. Yes, sir.

Q. Now, as to the Southern Pacific, its rate per ton per mile is just as high today as it was—subtsantially as high as it was in 1896. Is not that true?

A. I think so.

Q. And generally its rates are as high as they were at that time?

A. I think so.

Q. And its earnings, both net and gross, have more than doubled?

A. I think that is quite likely.

Q. And its operating expenses to its gross earnings have decreased?

A. I do not know as to that.

Q. Well, that is what the report shows.

A. Well, that is not my side of the account.

Q. You have more to do with handling the traffic than making the rates. You do not think, in view of that fact, that the rates on the Southern Pacific system are a little high?

A. No.

Q. You think they are very reasonable?

A. Yes, sir.

579 Q. Well, do you think they are low?

A. I think they are fair.

Q. And you think the competition on that transcontinental business, in view of that fact, is just as keen between the Union Pacific and Southern Pacific as it ever was?

A. As I said, I know it.

Q. That also in view of the fact that they have the same traffic officials, the same president and the same ownership?

A. Yes, sir.

Q. Well, do you mean by that that there never was any competition?

A. Not to any considerable extent.

Q. You have testified heretofore that there was.

A. Well, I said whatever competition there was has continued. I have repeatedly stated to you that the Union Pacific was a connection of the Southern Pacific. Now, the Union Pacific had no authority, no right, and could not in any way reduce the rates, except secretly, and I have no knowledge of it having done that in connection with the Southern Pacific.

Q. It could reduce on its own?

A. I supposed we were talking in the main about the interchangeable business.

Q. In connection with its connection to the east it could reduce its proportion of the rate, leaving your proportion the same, could it not?

A. It could not do that without everyone of its rivals, the Santa Fe, the "Q", the Rock Island and the Missouri Pacific and Rio Grande doing the same thing.

Q. Certainly.

A. What would be the object of their doing it under those conditions, and that without any combination?

Q. What is the object of any competing line ever reducing rates?

580 A. Well, I think that wherever there is such an act it is with the object of getting a larger share of the business.

Mr. KELLOGG. That is all.

A. Not with any particular idea of benefiting themselves permanently.

Mr. KELLOGG. That is all, Mr. Stubbs.

Comr. CLEMENTS. Mr. Stubbs, what express company operates over the systems of road you represent, the Southern Pacific and Union Pacific and their lines?

WITNESS. The Wells Fargo & Company Express operate over the Southern Pacific. I think over the Union Pacific, the Navigation Company and the Short Line the Pacific Express Company operates.

Comr. CLEMENTS. Do you know whether the Southern Pacific owns any stock of the Wells Fargo Company?

WITNESS. I do not know of my own knowledge. I have understood that either the Southern Pacific Company or some of the people that are represented or interested in the Southern Pacific Company own stock in the Wells Fargo.

vice versa affected materially the Denver & Rio Grande and its Ogden connection with the Central Pacific, and that that made necessary the establishment or was a prime factor that made necessary the establishment of the Western Pacific to San Francisco.

A. I do not think you believed it.

Q. You do not think that is so?

A. Yes, I will say I do not think that is so. As a matter of fact, the Southern Pacific works preferentially with the Union Pacific, but notwithstanding that for the last four years, on the average for the last four years,—and you cannot equalize interchange business except by an average——

Comr. CLEMENTS. Except by what?

WITNESS. By an average. For the last four years the Southern Pacific at Ogden has given the Rio Grande as large a per cent of the business it had to offer as the Rio Grande has given to the Southern Pacific.

Q. How could the Rio Grande get to San Francisco except over the Southern Pacific?

A. It cannot.

Q. So, it gave you all it had going to San Francisco?

A. Yes, sir.

585 Q. And you gave it back an equivalent to the amount it gave you?

A. Yes, sir; that is what I mean.

By Mr. KELLOGG:

Q. An equivalent in tonnage?

A. Yes, sir; an equivalent in tonnage. I will frankly say to you that I was surprised when the showing came to me that way. That is also true of passengers. In other words, the Rio Grande, according to the custom governing the interchange between connecting lines has not a thing to complain of as to the Southern Pacific, and if they found their building of the Western Pacific upon the suspicion—because it cannot be more than a suspicion, the facts being as I have stated them—that they were not getting as much tonnage as they were entitled to under the rules from the Southern Pacific, why, then, they have been misled very materially.

Q. Has there been a great increase in tonnage that has been delivered to the Union Pacific?

A. There has been a very material—according to my recollection—increase on the gross tonnage moving both east and west bound via Ogden, but the increase has been almost wholly on the Union Pacific and Southern Pacific.

Q. Yes, there has been no increase of tonnage delivered to the Denver & Rio Grande since 1901, has there?

A. There has been no material increase in the tonnage delivered by the Rio Grande to the Southern Pacific nor by the Southern Pacific delivered to the Rio Grande.

Q. One of the reasons would naturally be because you gave preference to the Union Pacific as to the unconsigned traffic, did you not?

586 A. It might have had some influence, but the facts are as I state them, and the Commission can judge. I do not think anything the Southern Pacific Company has done could have worked that result which I have stated to you; but, on the other hand, or in order to be perfectly plain and frank, for there is nothing to conceal in the matter, the Southern Pacific Company has worked preferentially with the Union Pacific as against the Rio Grande and I personally told Mr. Gould just to the extent and the degree to which we would do it.

Q. One question I did not think to ask you. Did you wish to ask a question? (Addressing Commissioner Clements.)

Comr. CLEMENTS. Yes, but I will not interrupt you.

Q. On business to the Atlantic Seaboard and points east of that line near Pittsburg, the rates are the same to certain Colorado points via the Texas ports as they are via all-rail, are they not?

A. No, sir; I think not. I think, so far as Colorado and Texas are concerned—I think that is a differential territory.

Q. That the rates are less by the southern routes?

A. By the South Atlantic as well as by the Gulf ports.

Q. That is, that business moves from the Atlantic ports via Galveston and rail from there to Colorado points at less rates than by rail all the way?

A. I think so.

Q. So that business by the Sunset route is in competition with the lines running west from New York and Pittsburg to the Colorado points?

A. Yes, sir; the Union Pacific works business that way in connection with the Savannah route, taking it from the Savannah route at Kansas City.

Q. And as to that business the Union Pacific does not have
587 to have the Southern Pacific as a connection?

A. No.

Q. So that the Southern Pacific and Union Pacific are naturally competitive as to that business?

A. Well, they, as a matter of fact—the way the business moves, you may say there is a measure of competition there, but it would not necessarily follow because the Union Pacific can make a line via Galveston as well as the other.

Q. But it can also make a line via Kansas City and Council Bluffs.

A. It has a line that way.

Q. And using that line to Colorado points, it does compete with the Southern Pacific via New Orleans?

A. Today precisely as it always has done.

Mr. KELLOGG. That is all.

By Comr. CLEMENTS:

Q. Mr. Stubbs, you said a moment ago that where a new line is built, sometimes it starts into competition by reducing rates, but that as a general rule it settles down to where, if a reduction is made by one, it is made by the whole bunch.

A. Well, I was speaking with respect to the general experience in the past.

Q. That is what I understood.

A. That has been my experience.

Q. That is the way I understood you.

A. I had no particular case in mind.

Q. That, you state, is the general practice?

A. It has been in the past. I think it will grow more and more into disuse, the opening of the new line in that way. The reason is that it does just as much harm to the community at large as
588 it does to the railroads or carriers. Instability of rates is as damaging to the public as it is to the carrier, and far more so.

Q. I suppose the thing that keeps a single road from doing that is the knowledge of the fact that the others will follow suit and do the same thing, so that no permanent increase in tonnage is gained by it?

A. Yes, that has its influence, but then the consideration of its own interests independently would lead the carrier to hesitate today. Rates, as a whole in the United States are low. There is no question about that. Take any comparison you may make with foreign countries, they are low, and I think that in the natural course in the growth and development of commerce and new countries, they are bound to go lower, and that going lower in the way that they will under settled conditions, that the condition of the public, the country, the community served by the carriers, as well as the carriers themselves—it will be far more healthful. I do not know of an instance where I have in my official relations passed through a war in rates where the merchants, the shippers, did not complain just as bitterly—well, more bitterly than I complained of the effect on us. It unsettled all conditions.

Q. Well, of course, that is due to a rate war. But what I was coming to was, you said that where a reduction was made now under modern methods or present conditions, ordinarily it was done by all the roads and not by one; that they all made the reduction—that they all made the reduction substantially at the same time.

A. Well, it may be caused by the position taken by one road,
589 but before the reduction is put into effect, all that are concerned in it or affected by it, know it, and have put themselves in position to meet the rates and put their tariffs in on the same date.

Q. Is not that substantially true in respect to increases as well as decreases?

A. Why, it must necessarily be true in respect to increases. I cannot increase a rate unless my competitor does.

Q. You would not undertake to do it, would you, unless you felt sure that the others would do the same thing at the same time substantially?

A. Well, not ordinary conditions. There might be conditions that would cause me to do it, but I think I will let my answer stand as Yes to your question.

Q. Take these increases that have just been referred to by Mr. Kellogg, occurring in 1903. They appear to have been published by all transcontinental lines at the same time?

A. Yes, sir.

Q. Are they published by a joint common agency that represents all the trans-continental lines?

A. They were, and today the tariffs for Pacific Coast business, published by the transcontinental lines are published by a common agency, and we are petitioning your Commission to allow that to continue. We believe that it will work to the public interest as well as our own.

Q. Were these increases you have just referred to by all these lines published by a common agency at the same time? They must have been the subject of conference and understanding between the competing lines, were they not?

A. Yes, we do not deny that. We do confer as to what rates shall be.

590 Q. And reach an understanding as to what each other shall do in respect to the matter? Is that true?

A. Well, in one sense, yes, sir; but not in the sense that any one line is compelled or coerced by another to do that thing. After all it is done in such a way that as a matter of fact it is the individual interest of the company that is considered and operates upon the mind of its representative in determining whether the change shall or shall not be made.

Q. But after all, is it not also true that if you wanted to make an advance you would not in fact undertake to do it until you had the practical assurance that the competitor would also do it at the same time? In other words, your action would be dependent on his, would it not?

A. Well, that fact, Mr. Commissioner, is—or that condition or practice is not created by the organization. For example, if I operated a line out of Chicago to the Missouri River and I felt that the conditions were such that rates were not remunerative, they were not fairly proportioned to our expenses, and Mr. Biddle operated another line and Mr. Darius Miller another, and half a dozen others, I might go to each one of these men individually and state the facts and say that I was of the opinion that the rates ought to be advanced, and I might be satisfied that if I did it, they would follow, and yet have no assurance or agreement that would subject them to a penalty or in anywise deter them from doing what I thought it was to our interest to do, if they did not want to.

Q. But if you did not believe that they were going to do it or have practical assurance that they were going to do the same
591 thing at the same time, you would not do it?

A. I would not dare do it; no, sir.

Q. So, after all, it is not absolutely independent action, because your action is dependent on the knowledge of what they will do?

A. It is just as independent as the act of any member of society can be. Every member of society is under some obligation to his neighbor. He yields a portion of his natural right in order to contribute to the well being of the whole, and I do not see any difference.

Mr. KELLOGG. Well, he has the power to reduce rates without the consent of his competitor, has he not?

WITNESS. Yes, sir; but he will not do it unless he talks with them about it.

Mr. KELLOGG. It has been done, has it not?

WITNESS. Yes, sir. There have been a great many things done. I do not think you will put an experienced traffic manager upon this stand but what will tell you that a great many things have been done that ought not to have been done, and he will be very glad to see them made impossible.

Mr. KELLOGG. But some one line or the other must reduce the rate as a starter, and usually does without the consent of the other, don't they?

WITNESS. I think—well, you might—I do not like your word "consent." Of course, it must be true that any suggestion whatsoever, whether it is for an advance or for a reduction, must have a starting point with some one person or some one company. I believe that to that extent your statement is true, but not true in the sense
592 that I think you would like to have me tell it.

Q. Have you ever attempted to increase or reduce rates on your road after talking with these other gentlemen representing other roads where they did not consent to it and you desisted from your purpose because you did not get their consent or concurrence?

A. I do not remember ever having advanced a rate without feeling pretty certain that my competitors would follow, but I think there have been cases that I have reduced rates openly by published tariffs that I had reason to believe that my competitors would rather that I would not do it.

Mr. KELLOGG. That is what you call competition, isn't it?

WITNESS. That is competition.

Q. Well, if the same interests dominated the various roads that had previously been in competition——

A. Sir?

Q. I say to the extent that the same interests dominated the various roads that had previously competed, isn't all that difficulty about concurrent action removed; that is, if the same people own the Southern Pacific and the Northern Pacific, the C. B. & Q. and the Santa Fe, or, in fact, if they influenced the action of each one, you would not

be troubled then about having to talk to Mr. Darius Miller and these other various representatives of the various roads?

A. I think, under those conditions that the rate would be diminished gradually, just as rapidly as though they were under the continuance of the present conditions.

Q. What would reduce them in that case; what influences?

593 A. Why, the commercial and industrial conditions that call for it. I do not suppose that there is anybody who will sit up and say that because an individual merchant says he would like to have a lower rate than he is getting, that that is a good reason for doing it, or that because a half a dozen merchants would combine and say, we want a reduced rate, that they ought to have it. The question is whether the reduced rate will be of a general public benefit, and whether it is for the interests of the community at large, in which I count the carrier as one.

Q. Suppose under these conditions that several lines had reached the point where they publicly and openly maintain and declare dividends to the extent of 10 or 12 or 15 per cent. a year, would that be any cause for a reduction on the ground that it was more than ought to be taken?

A. Well, I don't know whether it is expedient for me to give my personal opinion about that, but I think in considering these dividends of 10 per cent,—presuming that whoever refers to that is referring to the Union Pacific——

Q. Not solely.

A. That it would be well to remember——

Q. There are other roads that have declared more than that.

A. It would be well to remember the lean years that the stockholders of those roads have gone through. Years when they didn't get any dividend at all; and when you do that and make the average I think you will find, so far as the roads that I have any connection with are concerned, that the average interest on the investment has been very small, compared with what is commonly made by commercial enterprises.

Q. I didn't mean to refer to the Union Pacific particularly. My question was when they get to where they do that year after

594 year, when they come to have what would be generally regarded as an excessive income, would that be a factor that would cause a reduction of the rates if the commercial conditions did not demand it; and I referred to other roads as well as the Union Pacific when I spoke of 10 per cent.

A. Well, under present conditions I don't think 10 per cent. interest is a very excessive interest. Take the cheapness of money and the high profits that everybody is making, that is, everybody engaged in any enterprise; take even the cost of labor or I mean the revenue of the laborers today as compared with what it was ten years ago. I think the laborer is getting perhaps just as much out of the general increased prosperity of the country as the capitalist is, if the capitalist does not get more than 10 per cent.

The CHAIRMAN. Just one question, Mr. Stubbs. At one time a portion of the lines between Ogden and San Francisco was an independent line—the Central Pacific, wasn't it?

WITNESS. Well, I think I know what you want.

The CHAIRMAN. I want to locate the date of the acquisition of that property by the original——

WITNESS. Yes, I know. The Central Pacific was the original line operated by the Central Pacific Railway Company. That ran from Ogden to Sacramento and from Sacramento to San Francisco. The Southern Pacific Railroad was constructed by the same people. The Southern Pacific Railroad was built to Yuma on the Colorado River and the Southern Pacific Railroad of Arizona was built
595 across to Arizona; and the Southern Pacific of New Mexico was built across the State of New Mexico to El Paso, or to the Rio Grande River, just opposite El Paso.

Well, those lines, those Southern Pacific Lines were built by the promoters and constructors, and practically the owners of the Central Pacific; and the Central Pacific continued to operate them until sometime along in 1885, when the Southern Pacific Company of Kentucky, the holding Company, was organized and took over all the stocks of both companies. That is my understanding of it. Of course, I am not an authority on those things, but that is my understanding.

The CHAIRMAN. That is just the point I wanted to determine, that there was a unity of interest at all times between the line from San Francisco east as far as Ogden and the line subsequently built from San Francisco south that again forms a part of the Southern route.

WITNESS. Yes, sir; practically the same men built them.

The CHAIRMAN. And when the holding company, under the laws of Kentucky, was organized, it acquired both of them at about the same time?

WITNESS. Yes, sir.

By Mr. MILBURN:

Q. Mr. Stubbs, you referred just now in the discussion of the matter of dividends to the lean years, of the past; there may be lean years in the future, may there not?

A. Well, I hope there won't, but I am afraid there will be.

Q. This is a period of what you call very prosperous conditions, physical conditions?

A. The most exceptional that I have known of in my life.

596 Q. You spoke, in answer to a question which assumed your control as traffic manager over many other different lines, which were enumerated, from those which are under your present jurisdiction, that you did not think it would make much difference with respect to competition under existing conditions. What do you mean by "existing conditions?" I think that was your phrase.

A. In the law, and the more sense that railroad companies, through their officers and agents, are getting every day.

Q. What do you mean by "the law?"

A. I mean that the Interstate Commerce law will be very effective in restraining practices that, while in the past were lawful or at least not prohibited, have been detrimental to the interests of the public and the carrier. I have particularly in mind in saying this, the midnight tariff that is killed by the thirty days' notice clause, and also the fact that the thirty days' notice clause is going to make a stability of rates generally that has not obtained, and it is of more value, upon the whole, to the public, in my judgment, and I think merchants generally consider it so, than the volume of the rate, whether it is more or less. I don't know of anything that has been said to me more often by strong shippers and able men than that "We want to be sure; we want to be certain, Mr. Stubbs, that we get as low rates as our competitors, but one thing that is of more value to us than anything else is to have stable rates so that we can adjust our business to it and know that when we buy goods today, that in 10 days after we have shipped, our competitors who
597 have bought subsequently, cannot ship and get a difference of 2 or 3 or 5 per cent in the rates over us."

Q. You give significance to the thirty days' provision and to the effect of it, which I do not quite follow or appreciate. Would you mind amplifying it a little?

A. The present law provides that the published rates cannot be changed, either advanced or reduced, except upon thirty days' previous notice and publication and posting of the tariff. The old law provided that a published rate might be reduced upon three days' notice and publication and posting of the tariffs and might be advanced by ten days' notice. Now, in my own opinion, that change was the wisest change that has taken place in the new law, notwithstanding some people may take a different view. I think that the effect of that is going to be of more public benefit than any other.

Q. As a measure maintaining rates?

A. Giving stability.

Q. Giving stability, and preventing a slashing of rates?

A. Not slashing.

Q. Changes of rates?

A. Changes that may be made orderly and in a lawful way.

Q. That was one factor that you put under the head of "existing conditions." What was the other—the personal equation, did I understand that of the officers; the actual men in charge?

A. Well, I don't know that I elaborated that.

Q. I don't know whether you gave that at all.

A. I hold strongly this view, Mr. Milburn, I don't know that I can express it better than by giving an illustration. At the time
598 the question was up as of great public interest between the Northern Pacific and the Great Northern, that the common control of those lines would wipe out all competition between them—in talking with my friends I expressed a view that I hold, that that

was impossible. I consider Mr. Hill one of the greatest men in this country, probably at the head as a practical railroad man; but with all his power it is utterly impossible for Mr. Hill, even if he has the will, and owning and controlling the Northern Pacific and the Great Northern, to completely destroy competition between them. He has got to employ officers; vice-presidents, general managers, traffic officials. And what I mean by the personal equation, if I stated that, is that the Vice-President of the Great Northern has a personal interest in that line; he has his reputation, his record to make; he has his influence and he is going to build his line, the Great Northern, as against the Northern Pacific, and Mr. Hill cannot help that. If he takes that out of the man, the officer, then he destroys his influence, his value, and he might as well turn his business over to a hundred dollar clerk.

Comr. HARLAN. If the same man makes the rates for these two roads, the competition between the roads will not take the form of rate-changing, will it?

WITNESS. The same man in making the rates would not do any differently than two men in making the rates. The rates are the same; the rates have been the same from St. Paul to Seattle over the Great Northern and over the Northern Pacific—not any more so since the so-called interest of Mr. Hill in both companies than they were before he was known to have any interest.

599 Comr. HARLAN. In response to Mr. Kellogg you said that a reduction of rates was competition. Everyone knows that that is one way by which railroads may compete with one another. Now, if you were the rate-maker for the Great Northern and the Northern Pacific, would it be likely that the competition between those two roads would take that form?

WITNESS. In my humble judgment, quite as likely as if you were the traffic manager of one line and I was of the other. That is what I mean by the personal equation.

Q. Mr. Stubbs, taking the transcontinental business, the transcontinental lines, rather; they are made up of various groups of railroads, are they not?

A. Yes, sir.

Q. The trunk lines running to the Atlantic seaboard from Chicago; some from Chicago and some from Buffalo and so on; they are one element in these transcontinental lines, are they not?

A. Necessarily.

Q. The trunk lines between—I suppose the general expression that I may use is the Mississippi River and the Missouri River, are made up of another set, are they not?

A. Yes, sir.

Q. The lines west of that; west of the Missouri River are another group?

A. Yes, sir.

Q. Now, bringing together those lines in relation to transcontinental traffic, what would be the importance, as a factor in rates,

in rate making of the Union Pacific as a separate and independent system; not coming east of Kansas City and Omaha; not going west of its western termini?

A. Well, the Union Pacific would be a middle link in the through line, and would have to do pretty much what its connections desired.

600 Q. Did you hear Mr. Markham's testimony this morning?

A. I did.

Q. Do you remember the testimony he gave, I think, in response to questions that I put, about a transcontinental line worked by the Union Pacific from Ogden to Portland and thence by water to San Francisco, as an effective independent line which would preserve its independence in dealings with the Southern Pacific or the Central Pacific from Ogden to San Francisco, as an independent line? Do you recollect that testimony?

A. I do.

Q. Will you please give me your view of that matter, of that situation, in your own words?

A. Well, the Navigation Company, I understand, by which I mean the Oregon Railway and Navigation Company, has operated a line of steamers between San Francisco and Portland—well, as far back as I can recollect; long before I had any connection with it; and the Short Line, the Oregon Short Line and the Union Pacific have been the Navigation Company's principal dependents in the matter of connection for a long time for trans-continental business to Portland or to any point south of Portland; although it has been a connection at Spokane also with the Great Northern for Portland, and for business to points south of Portland; that is, for many years, and they have never been able to—I don't recollect that we have ever made any serious attempt to take trans-continental business, what we call trans-continental business; business originating, say, east of their eastern terminus, to San Francisco via Portland and the Columbia River and the Pacific Ocean on their steamships. It seems to me that fact of itself would show that it was in their judgment practically and old thoroughfare.

601 Now, as to the Union Pacific individually, the Union Pacific connects with the Oregon Short Line at Granger. Granger is somewhere in the neighborhood of 130 miles east of Ogden and it also connects with the Southern Pacific, what was originally known as the Central Pacific, at Ogden. Now, the Union Pacific, I would consider, would have a longer haul and a very considerably larger portion of the through rate by interchanging its traffic with the Central Pacific at Ogden than it would by interchanging its traffic with the Short Line at Granger; while the use of the Ogden Line would open up to the Union Pacific all the interior territory, the common points, what is called the Pacific Coast common points, including some interior points like Sacramento and Marysville, and by working with the Union Pacific all of the California, all of the interior California is opened up freely and fully to the Union Pacific by the Southern

Pacific. If it worked a line by Portland and the Steamship it would be getting less out of the through rate than it would if it delivered to the Southern Pacific at Ogden, but would also be limited to San Francisco proper and would take the business under the necessity of a delay waiting for the ship to depart from Portland and the increased time required in the haul from Granger to Portland, thence to San Francisco by ship as against the all-rail haul from Ogden direct to San Francisco. So that it would be manifestly to the disadvantage of the Union Pacific to work the line via Portland or San Francisco business or for California business, independent of what might follow if it undertook to do it in view of the attitude which the Southern Pacific might take toward it.

602 Q. Treating, Mr. Stubbs, the Southern Pacific Line as totally independent and the Union Pacific and the Oregon Short Line and the Oregon Railway & Navigation Company as one system, and the Union Pacific endeavoring and seeking to work a line to San Francisco via Portland, what effect would that have in the ordinary course of things in its relation to the Southern Pacific; what would be its power to do so?

A. Well, of course—I think if I or you or brother Kellogg were traffic manager of the Central Pacific under those conditions, we would try to handle the Southern Pacific traffic in such way as to make it a very expensive thing to the Union Pacific to use the line via Portland.

Mr. KELLOGG. And the line via Portland might make it expensive to the Southern Pacific?

WITNESS. No, sir.

Mr. SEVERANCE. Not as long as Mr. Stubbs had the Southern Pacific.

WITNESS. Not if Mr. Severance was in command of that, because you cannot cut those rates—that is what you had in mind—without cutting your own in getting the traffic. You cannot hurt me under those conditions without hurting yourself quite as badly.

Mr. KELLOGG. And vice versa.

WITNESS. That is it. No; not in the other case. Evidently it would not be necessary with another connection for the Southern Pacific to cut rates to make you very sick if you were running the Union Pacific and they wanted to do it.

Q. Without changing its rates?

603 A. And without doing any unlawful thing either.

Q. Taking this very case, without changing its rates at all, if it was an independent line, it could divert all the traffic subject to its control to the Denver & Rio Grande, couldn't it?

A. Certainly.

Q. It could divert all the traffic subject to its control to the Denver and Rio Grande, couldn't it?

A. Certainly.

Q. It could exercise its influence in that?

A. Certainly.

Q. Well, now, as a practical railroad man, Mr. Stubbs, if you were in charge of the Union Pacific System, including in it the Oregon Short Line and the Oregon Railroad and Navigation Company and the boats of the Central Pacific, and say they were an independent company, wouldn't you regard it as quite essential to the welfare of your line to operate it in connection for San Francisco business with the Southern Pacific line?

A. No doubt of it. That is the view that the Union Pacific has always taken of it. I do not suppose it is a proper thing for me to exhibit on the witness stand, but it seems to be such a preposterous notion as to be hardly worthy of a serious answer, that it would be at all, in any sense or in any degree, to the interest or profitable to the Union Pacific or even the Navigation Company, to work business via Portland and the sea as against the Union Pacific's all-rail connection at Ogden, with the Central Pacific, or the Navigation Company's connection at Portland with the Southern Pacific line. You might make a paper case out, but you cannot get any railroad man or any traffic man that knows his business to say anything differently.

Q. There is, is there not, along the Oregon Short Line or in
604 the region of the Oregon Short Line, and I do not know but what the Oregon Railroad & Navigation Line—it is the Navigation Line Judge Lovett tells me. In Washington they are reaching wheat-producing lands; that is true, isn't it?

A. The Navigation Company's Line runs from Portland up the Columbia River and then has various branches running from Wallula and another junction point through to Walla Walla and Spokane and draining what is called the Palouse Valley, that famous wheat-producing country; and in that territory is also the Northern Pacific.

Q. That is a business local to that region?

A. Altogether local to that region, but not local to the Navigation Company, because it is subject to the competition of the Northern Pacific. The Northern Pacific is seeking to draw that wheat or the flour that is made from it, out through Tacoma and Seattle, while the Navigation Company seeks to take it out by Portland. The ships that serve Puget Sound take it, after it is milled into flour, to the Orient. The ships that serve Portland take it from Portland, in the form of flour, from Portland. That is the chief business of those lines, of the outgoing business of those Washington lines, including the Navigation Company.

Q. Now, Mr. Stubbs, that was Oriental business, originating right there in the locality that you have described, consisting of the wheat grown there and the flour ground from it?

A. Yes, sir.

Q. A large and valuable business?

A. The principal market for it, but not altogether, but the
605 principal market for it is in the Orient; some goes to Europe and some goes to South America.

Q. And that is taken by the Northern Pacific to Puget Sound and by the Oregon Railroad and Navigation Company to Portland, and thence by ships to the Orient?

A. Yes, sir.

Q. Now, what was the connection, if you can tell me, between that local traffic and the so-called Portland & Asiatic Steamship Company? Will you give a history of that thing, if it is in your mind?

A. It was essential, absolutely necessary, for the Navigation Company to have a steamship line, or to induce a steamship line to operate between Portland and the oriental ports, in order to furnish an outlet for this wheat grown on its line in Eastern Washington; otherwise, as that was the chief market, that is, the Orient was the chief market for that wheat—otherwise that wheat, converted into flour, would go out to the Orient from Seattle and from Tacoma, and the Navigation Company would get no haul in it, no earnings on it whatsoever. The Navigation Company, before I was with it—this is simply a matter of history; I don't know that my testimony is worth anything on that—had engaged with Mr. Doddwell to run a line of steamers in connection with Portland to the Orient, but it was not a profitable venture for Mr. Doddwell, and he withdrew. The upshot of it was that the Navigation Company had to provide steamships in order to take care of that business or lose the business, which was practically in one sense local to it in Eastern Washington. They then organized,
or caused to be organized the Portland & Asiatic Steamship
606 Company and chartered vessels and have since operated it at considerable loss. I mean by that that the earnings from the Steamship Line do not meet the expenses by quite a considerable sum—I cannot recall what it was per annum; but when you take into consideration that it enabled the Navigation Company to hold its grain traffic from Eastern Washington into Portland, of course it was a profitable arrangement. This is the occasion for the organization or establishment of a Portland & Asiatic Steamship Company; that is the occasion for continuing it; and all other traffic that it handles through Portland in connection with the Portland & Asiatic Steamship Company is merely incidental.

Q. Well, now let me ask if there has been any considerable volume of so-called transcontinental traffic for the Orient which took that line?

A. Very little. There is some, but the ships were infrequent. According to my recollection, they couldn't guarantee even a monthly service. While from Puget Sound and from San Francisco, there were several lines which gave, well, at least bi-weekly and sometimes oftener service, and the demands—the number of ships that were warranted by the line—I think it would not exceed three, sometimes there were only two—all their space at times was demanded by the offerings of flour and local cargo, and transcontinental traffic would be shut out so that it was found to be very difficult to engage outward tonnage that way. The inward tonnage they worked and got all that they could, making the same rates, as I understand it, as were

made by Puget Sound, and it was forwarded from Portland over the transcontinental lines precisely as it had been forwarded from
607 Seattle or Tacoma or San Francisco, had it gone that way.

Q. So the origin of that line was the local traffic on the Oregon Railroad & Navigation Company?

A. There never would have been any line there, either of navigation ownership or private ownership, except for that business.

Q. Now, the whole situation, Mr. Stubbs,—would you ever think of trying to establish a steamship line at Portland to endeavor to compete for transcontinental or Oriental traffic with Puget Sound?

A. No, sir. As I say, the sole reason, the foundation reason for the establishment of that line was to take care of the wheat and flour traffic. That is a matter of public knowledge.

Q. Now, Mr. Stubbs, that same local traffic, the flour and what not that originates on the Oregon Railroad & Navigation line, to some extent finds its way to San Francisco, doesn't it?

A. How is that?

Q. I say that some of the products that we have been referring to here as a local on the Oregon Railroad and Navigation line, to some extent finds a market in San Francisco? No, I am wrong about that.

A. Oh, certainly. You mean wheat and flour and their products go to San Francisco? Yes, and for that matter some of it goes to San Francisco for transfer to South American vessels, but I don't think that is in very large volume.

Q. They still run between——

A. Yes, sir. That local business, particularly in wheat, is
608 increasing in San Francisco. The wheat production of California is diminishing very rapidly.

Q. What steamers run there?

A. Well, I don't know.

Q. Don't some of the independent steamers run?

A. Oh, yes, a number of them.

Q. There is an independent business done there?

A. Yes.

Q. And has the Navigation Company——

A. There is a lot of schooners that run south with lumber, and I believe they also run with wheat. I think there is a regular steamship line between San Francisco and the north coast, but, whether,—independent of the Navigation Company,—it goes into Portland, I am not sure; I think it does not; but as to that I am not a very good witness because I haven't paid any attention to that business.

Q. Oh, very well. I don't think of anything else now. Do you think of anything else that you think I might ask you?

The CHAIRMAN. You don't mean that Mr. Stubbs is exhausted?

Mr. MILBURN. I save myself by asking if there was anything else I might ask him about, or that I ought to ask him, whether I have been a diligent pupil.

The CHAIRMAN. Have you anything further, Mr. Kellogg?

By Mr. KELLOGG:

Q. Mr. Stubbs, you say the Doddwell Line or the Portland & Asiatic Steamship Line was primarily created, organized, for the purpose of handling flour to the Orient and to San Francisco?

A. That is my impression. Of course, I was not connected with it——

Q. To the Orient and not to San Francisco?

A. No, to the Orient.

609 Q. That is not its only business?

A. It takes any business that it can, but it gives preference to that.

Q. It brings back something from the Orient, doesn't it?

A. I explained that.

Q. And delivers it to the Navigation Company?

A. Yes, sir.

Q. Now, the San Francisco ships don't take any of that business, do they, from up the Palouse country?

A. No, not under any through rate. I don't know whether—I think they have at times taken flour.

Q. Well, they trans-ship it at San Francisco?

A. Yes, sir. It was done by the Navigation Company's boats or outside boats, but I am not sure, I think I have known of cases of that kind.

Q. Then in the case coming back, it is delivered to the Navigation Company and hauled east by the Navigation Company, the Union Pacific and the Short Line?

A. That is right.

Q. What did you mean by testifying when you testified in this case, that the Oregon Railroad & Navigation Company and the Southern Pacific Lines were diametrically opposed to each other and competing vigorously every day in the year—in the Graham case?

A. Well, it is a fact, as I have testified here, that the Southern Pacific Company takes business into Southern Oregon, and as I said, I was not sure about it, but I think that it took business to Portland and possibly out of Portland for eastern points; and it is also a fact,

610 just as I have explained to you that the steamship line between the Orient and San Francisco and the steamship line between the Orient and Portland, and the steamship line between the Orient and Puget Sound all compete for the traffic from the Orient to all points in the United States.

Q. And the Navigation Company and the Short Line and the Union Pacific are the connecting links with one of those steamship lines?

A. Yes, sir.

Q. And is therefore a competitor of the Southern Pacific?

A. There is no question about that, so far as business goes, but it don't amount to anything.

Mr. KELLOGG. That is all.

The CHAIRMAN. Any further questions to be asked Mr. Stubbs. If not he is excused.

(Witness excused.)

611 Mr. SEVERANCE. I next offer in evidence, pursuant to our stipulation, the testimony given by Julius Kruttschnitt, a witness before the Interstate Commerce Commission, who testified at Chicago on the 10th day of January, 1907. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Kruttschnitt were upon the stand giving the same testimony.

Mr. EVARTS. Yes.

JULIUS KRUTTSCHNITT

testified:

Examined by Mr. KELLOGG:

Q. Mr. Kruttschnitt, prior to 1901, what position did you hold with the Southern Pacific Railway?

A. I was—prior to 1901 I was vice-president in charge of operation.

Q. Vice-president in charge of operation. Where were your headquarters?

A. From 1895 to 1901 they were in San Francisco.

Q. That was the headquarters of the Southern Pacific system?

A. Yes, sir.

Q. That system is substantially as Mr. Stubbs described it yesterday?

A. Yes, sir.

Q. I do not care to go over that again. When did you become an official of the Union Pacific Company—about when?

A. I think it was the first of April, 1904.

Q. The first of April, 1904. Since that time you have occupied what position with the Union Pacific Railroad?

A. Director of maintenance and operation.

612 Q. You are the director of maintenance and operation of what lines?

A. Of the Southern Pacific Lines and of the Union Pacific System, taking in the Oregon Railroad & Navigation Company and the Oregon Short Line.

Q. Your headquarters are where?

A. In Chicago.

Q. Your jurisdiction extends over those lines in what respect?

A. I have charge, as the title would indicate, of operating matters and maintenance of the property.

Q. Maintenance of the property and operation of the property, and Mr. Stubbs has charge of the traffic?

A. Yes, sir.

Q. Now, have you an assistant director of operation and maintenance?

A. They are in charge of their respective presidents.

Q. Each line having—Is the president of each line the general manager?

A. He is not.

Q. No. Mr. Harriman is the president of some of them, is he not?

A. Mr. Harriman is president of the Galveston, Harrisburg and San Antonio, and of the Texas & New Orleans.

Q. Who has charge of the maintenance of way and operation of those lines, reporting to you?

A. No one.

Q. What is your jurisdiction over the lines in Texas?

A. I have none.

Q. Do you consult with them?

A. I do not.

Q. Under your direction, does the purchasing agent purchase the equipment for them?

A. He does not.

Q. In Louisiana, who has charge of the lines?

A. You mean immediately in charge?

Q. Yes.

A. Mr. Fay, who is the general manager, and he has a general superintendent.

Q. He reports to you?

A. Yes, sir.

Q. Now, does Mr. Thorne, who is the purchasing agent of
616 the lines of the Pacific system—he buys engines and materials in large quantities, and cars, etc., for the entire system, does he not?

A. He buys cars and engines for all of the systems, over which I have jurisdiction, and I think for the others.

Q. Now, who makes out—who authorizes the requisition for those engines, for instance, that you are going to buy during this present year?

A. The requisition of all the lines, except the Texas lines, are made on me; I approve them and send them with a favorable recommendation to the President, who has the purchases made.

Q. Now, in purchasing engines for the Texas lines, have any been ordered for this year?

A. I think so.

Q. You haven't heard of it, directly or indirectly, officially?

A. Only in this way: Mr. Lovett is president of some of the lines and Mr. Harriman of some of the others, and they frequently correspond with me, asking my opinion about those matters.

Q. And in the purchase of engines and equipment for those lines, Mr. Harriman and Mr. Lovett, who are respectively the presidents of those lines, consult with you?

A. Yes, sir.

Q. And are these engines bought separately from the engines of all the systems, or are they all ordered together by Mr. Thorne?

A. That I don't know. Mr. Thorne, I expect, would have to tell that. I don't know how he orders them.

Q. Well, now, the engines for those lines come out of the common stock ordered for the system, don't they?

A. Yes, sir.

617 Q. In other words, if you are placing an order for the Pacific System for fifty engines, you place an order for 46 of them, and Mr. Harriman for two for a certain line, and Mr. Lovett for two more for another line, do they not; is that the way you do it?

A. Yes, sir.

Q. You divide it up?

A. Yes, sir.

Q. What is the object of that?

A. I don't know.

Q. You don't know?

A. You had better ask Mr. Lovett or Mr. Harriman; I don't know.

Mr. MILBURN. You can tell him.

Q. Now, do you keep track—in the estimating and making of provision for money to improve the lines in Texas, does Mr. Harriman and Mr. Lovett consult you, or do they consult you?

A. Yes, sir.

Q. They take your opinion as to how much money should be expended on the Texas lines and where it should be expended?

A. I expect you would have to ask them about it. I don't know whether they do or not.

Q. Well, they ask your opinion, then?

A. Yes, sir.

Q. Perhaps that is more proper. Whether Mr. Harriman takes it or not, you don't know?

A. No, sir.

Mr. MILBURN. I don't want Judge Lovett left out of that presidential business, you know.

Mr. KELLOGG. Oh, no; I am not going to leave the Judge out.

Mr. MILBURN. I have a president here, you know.

Q. Well, in making up your estimates for the improvements and betterments of various lines, you do this, do you not?

A. No. The general managers do it.

Q. Well, I mean they are approved by you?

618 A. Yes, sir; they are submitted to me, with the exceptions to which I have called attention.

Q. With the exceptions of the Texas lines, these estimates for improvements and betterments of the lines during the year are made up by the general managers first, and then they are submitted and approved by you, with the exception of the Texas Line?

A. Yes, sir.

Q. Or disapproved; approved or disapproved?

A. Passed on by me.

Q. Now, then, as to the Texas lines, those are made up by the respective general managers of those lines in Texas?

A. Yes.

Q. And they are considered by the presidents of those lines?

A. Yes.

Q. And those presidents confer with you as to the advisability of making those improvements and betterments on those lines?

A. Yes.

Q. The estimates for the improvements of those lines are submitted to you then, are they not?

A. I think so. I don't know whether they submit all.

Q. Now, in the selection of the division superintendents, and important officials in the immediate operation of Texas lines, are you consulted by Mr. Harriman and by Mr. Lovett?

A. I think so.

Mr. LOVETT. And I suppose you give your advice?

WITNESS. Yes.

Mr. LOVETT. So that practically you are the director of
619 maintenance and operation of all of the Pacific System that you have described, except the lines controlled by the Southern Pacific in Texas, and advisory as to those?

WITNESS. Well, I have no official connection with them.

Q. You are not a regularly appointed official?

A. I am not a regularly appointed official.

Q. Do you exercise an advisory position over them?

A. As I have already explained.

Q. In the appointment of the various officials under the general manager, excluding the Texas lines, what authority do you exercise?

A. For all the lines, excluding the Texas lines?

Q. Yes.

A. Supervisory.

Q. If a general superintendent is to be appointed, you approve it or disapprove it?

A. Yes. The general manager appoints him, subject to approval.

Q. The appointment is not announced until his approval by you, is it?

A. No, sir.

Q. And is that the case of any official below the division superintendent?

A. No. I hardly think they would submit anyone below the grade of division superintendent.

Q. Then, the general superintendents and the division superintendents are submitted and approved by you before they are announced?

A. Yes, sir.

Q. Now, how often do the general managers make reports to you?

A. As far as the general report goes each general manager writes what we call a monthly letter, stating about what has been done on the line under his charge during the month; the general condi-

620 tion of the property; it is a letter of general information. In addition to that there is of course correspondence which would be initiated by the general manager at such times as might seem to him proper.

Q. Now, under Mr. Bancroft in Utah there is a general superintendent or a division superintendent—what is it?

A. Bancroft has a general superintendent and an assistant general superintendent.

Q. Now, the general superintendent under Mr. Bancroft has jurisdiction over the same lines of the Southern Pacific, the Union Pacific, and the Short Line that Mr. Bancroft has?

A. Yes, sir.

Q. And subject to his orders?

A. Yes, sir.

Q. And reports exclusively to Mr. Bancroft?

A. Yes, sir. So does the assistant.

Q. So does the assistant?

A. Yes, sir.

Q. All the division superintendents on those lines report exclusively to Mr. Bancroft, do they?

A. No. To the general superintendent.

Q. Well, then, to the general superintendent, then, and that is the case over all the lines excluding the Texas line?

A. Yes, sir, with a few modifications. The Southern Pacific has two general superintendents; but that arrangement is substantially the same on all the lines.

Q. Have you anything to do with the Steamship Lines, Mr. Kruttschnitt?

A. With the Morgan Steamship Lines only.

Q. You have general charge of the maintenance and operation of the Morgan Line?

A. Yes.

Q. From New York to New Orleans and Galveston?

A. Yes, sir.

621 Q. And to Havana, it runs?

A. To Havana.

Q. Who has charge of the Portland & Asiatic Steamship Company?

A. Mr. Schwerin.

Q. Does he report to you?

A. He does not.

Q. He is in San Francisco?

A. Yes, sir.

Q. He has also charge of the Portland & San Francisco Line?

A. No.

Q. Who has charge of that?

A. You mean the rail line?

Q. Oh, no; the Steamship Line.

A. Oh, the Portland——

Q. The boats that run between Portland——
A. Mr. Schwerin has also.
Q. And he has also charge of the Pacific Mail Lines?
A. Yes, sir.
Q. And the Occidental & Oriental Steamship Lines?
A. I don't know whether he runs that or not; whether he controls that or not.
Q. These men do not report to you?
A. They do not.
Q. To whom do they report?
A. Well, Mr. Schwerin reports to Mr. Harriman.
Q. Mr. Harriman direct?
A. Yes.
Q. Now, who originated this plan of dividing up the Pacific Systems into divisions under a director of maintenance and operation, irrespective of the mileage owned by each line?
A. I don't know who the originator was.
Q. Wasn't it Mr. Harriman?
A. I suppose so; I don't know.
Q. So far as you know, it was?
A. So far as I know.
Q. You didn't do it?
A. No, sir.
Q. You received your directions from Mr. Harriman?
A. I received my appointment and directions from him.

622 Q. Did he map out this plan of having the Pacific System divided up into divisions and under the control of operating officials, irrespective of the mileage owned by each line?

A. If you mean whether he prescribed the mileage under each general manager, yes. Now, as to the limits of the divisions and the jurisdiction of the officials under them, no.
Q. You did that?
A. Yes, sir; I did that.
Q. Did you talk that over with Mr. Harriman?
A. In a very general way only.
Mr. KELLOGG. That is all.
Mr. MILBURN. No questions.
(Witness excused.)

623 Mr. SEVERANCE. I next offer in evidence, pursuant to our stipulation, the testimony given by E. O. McCormick, a witness before the Interstate Commerce Commission, who testified on the 10th day of January, 1907, at the city of Chicago. I understand that it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. McCormick were upon the stand giving the same testimony.

Mr. EVARTS. Yes.

E. O. McCORMICK

testified:

Examined by Mr. KELLOGG:

Q. Mr. McCormick, what is your position with the Pacific System?

A. Assistant traffic director.

Q. Have you charge particularly of passenger business?

A. Both passenger and freight.

Q. Well——

A. Under Mr. Stubbs.

Mr. LOVETT. Speak a little louder, please.

A. Both passenger and freight, under Mr. Stubbs.

Q. Well, I think Mr. Stubbs stated that you were more familiar with the passenger business than the other assistant director.

A. Because I had longer association with it.

Q. What was your position previous to being assistant traffic director of the Pacific System?

A. Passenger traffic manager of the Southern Pacific.

Q. With headquarters where?

A. San Francisco.

Q. How long?

A. From May, 1899, until April, 1904.

624 Q. You had exclusive charge of all the passenger business of the entire Pacific System, the Southern Pacific System, I mean, during that time?

A. Well, mainly the Pacific System, but what we called the Southern Pacific.

Q. That included the lines controlled by the Southern Pacific Railway Company, or the Southern Pacific Company, I should say?

A. Yes, for through business to New Orleans and locally on the Pacific Coast.

Q. Did you also have charge of the passenger business of the steamship line?

A. No.

Q. You didn't?

A. No.

Q. Well, so far as you know there were no common passenger officials prior to 1901, between the Union Pacific and the Southern Pacific? I don't mean a mere ticket agent; I mean passenger officials?

A. You mean above the rank, say, of general passenger agent?

Q. Yes; passenger agent or assistant general passenger agent, or anything of that kind.

A. No.

Q. When were you appointed assistant traffic director of the Pacific Line?

A. In April, 1904.

Q. April, 1904?

A. Yes.

Q. Since that time your office, either you or Mr. Stubbs, have had charge of the passenger business on all the lines.

A. Supervising, yes, sir.

Q. Now, do the local passenger agents of the various divisions report to your office—to Mr. Stubbs, I mean?

A. The general passenger agents?

625 Q. Yes.

A. Periodically.

Q. Mr. Lomax, of the Union Pacific, has charge of the passenger business of the Union Pacific?

A. Yes, sir.

Q. What part of the Union Pacific?

A. All of it.

Q. As far west as Green River?

A. On through business, yes; as far as Ogden.

Q. Do you mean——

A. Locally, I would say that he handled the business to Green River.

Q. Now, on through business, of course, he would arrange for through business running clear through to the Coast, wouldn't he?

A. Well, no, he would arrange up to Ogden on through business, and then Mr. Fee from there on.

Q. Who reports to your office—Mr. Lomax?

A. Yes, sir.

Q. Who has charge of the passenger business locally on the lines covered by Mr. Bancroft's jurisdiction, as described by Mr. Kruttschnitt?

A. Mr. Burleigh.

Q. With headquarers at Salt Lake?

A. Salt Lake.

Q. He has charge of the lines from Ogden to Sparks, on the Union Pacific, and between Green River and Ogden and of the Short Line?

A. Yes.

Q. I believe the entire Short Line?

A. Yes.

Q. He reports to your office? Who has charge of the passenger business in the territory covered by the general manager in Oregon?

A. Mr. McMurray.

Q. He reports to your office?

A. Yes, sir.

Q. He has charge of the Southern Pacific in Oregon, north of Ashland, and of the Oregon Railroad and Navigation Lines?

A. Yes, sir.

626 Q. Who has charge of the passenger business on the Southern Pacific lines in California?

A. Mr. Fee.

Q. How far does his jurisdiction extend?

A. To El Paso, Texas, on the South, and to Ashland, and to Sparks, as described, for the transportation department and on the through business to Ogden.

Q. He reports to your office?
A. Yes, sir.
Q. Who has charge of the Louisiana lines?
A. Mr. Batters, with headquarters at New Orleans.
Q. What is his title?
A. General passenger agent.
Q. Of the lines in Louisiana?
A. Yes, sir.
Q. And he reports to your office?
A. Yes, in a way.
Q. And does he cover the Morgan Line also, the Morgan Line of steamships?
A. Yes, sir, as an assistant to Mr. Nutting, in New York.
Q. What advisory capacity does your office occupy in relation to the Texas Lines?
A. None whatever, except on requests.
Q. On request?
A. Yes, sir. At times I have been asked to represent them, possibly, at a meeting, when it was not convenient for them to come here, but we have no direct control and no advisory capacity unsolicited.
Q. But your office has charge of through business to and from New Orleans, through Texas, does it not?
A. Yes, sir. By consent of Mr. Dunlap, who is the chief traffic official of the Texas Lines. That is, if a through rate were made he signifies his assent to be a participant in that through rate.
Q. Is Mr. Dunlap the traffic director of all the Texas Lines?
A. I don't think he is. I could not be positive without
627 looking at the guide. He is of the G. H. & S. A.
Q. How many passenger agents have you got; general passenger agents in Texas?
A. We have one, Mr. Anderson, under Mr. Dunlap, and then—I am not sure just where Mr. Anderson's jurisdiction extends as to the other Texas Lines. They are divided up there and I haven't had much to do with them.
Q. Does Mr. Anderson consult your office?
A. No.
Q. Never?
A. No.
Q. Mr. Dunlap does it?
A. Mr. Dunlap would probably do it over his name, if there was a necessity.
Q. There has been at times a necessity?
A. Oh, yes. Just recently, a day or two ago.
Q. You represented them at a meeting?
A. Yes, sir; at his request.
Q. You often do that?
A. Very seldom; very rarely.
Q. And you route business from Texas both ways?

A. Yes, sir; on the through line; operate a through train service that way.

Q. Now, Mr. McCormick, the rates for passenger service—take what is known as the Northern tourists' business. It is a large business, isn't it?

A. Yes, sir.

Q. Generally speaking, the travel is toward California in the early winter and back in the spring?

A. Yes, sir.

Q. The heaviest travel?

A. The heaviest.

Q. But there is more or less winter tourist business all winter long, both ways?

A. Yes, sir; and more or less tourist business the year around, so that it compels the Southern Pacific, for instance, to be a par-
628 ticipant in the all-year round-trip rate which is something unusual in any other territory; which rate is open alike to every road in the country.

Q. Now, all the rates for passenger business, for this business, for all the territory east of the Missouri River, to California and return by all the lines are the same, are they not, practically?

A. Well, yes. Some routes are slightly higher than others, but on account of the situation of the two rate-making points in California the Southern Pacific has what you might call a free rate for 482 miles between Los Angeles and San Francisco. It gets nothing for a portion of its route. It must make the same rate to San Francisco as it makes to Los Angeles; and then the Southern Pacific opens its road to every connection for diverse routes; it does not demand that they send it back and forth over one line, but it is open to everybody in that way.

Q. And the Union Pacific does the same thing?

A. The Union Pacific does the same thing. The Santa Fe Company does the same.

Q. So that the passenger business from the eastern territory, east of the Missouri River, can go to and from all California points at practically the same rate?

A. At practically the same rate; and by reason of the consent of the Southern Pacific road, with practically the same conditions as instanced now by the Milwaukee & St. Paul, and the Northwestern. The Chicago, Milwaukee & St. Paul operate through car service with the Southern Pacific via Omaha to Denver and to California, and in addition to that the Milwaukee and St. Paul are per-
629 mitted to operate through car service by way of Kansas City, turning it over there to the Missouri Pacific road, and then to the D. & R. G., and it is taken again by the Southern Pacific at Ogden; and the Northwestern operate a through service. The Rock Island operate a through service by way of El Paso, etc.

Q. And there is also a through service by the San Pedro?

A. There is also a through service with the Northwestern and the Union Pacific and the San Pedro.

Q. Now, the lines extending from Chicago to California, connecting at El Paso; for instance, the Rock Island, they run a through service with the Southern Pacific?

A. It is afforded the same facilities, as well as the Texas and Pacific, which is a part of the Gould System, officered over by Mr. Jeffery. And each line also is afforded through service by way of Ogden to such an extent that the Southern Pacific has not a single train over its road that Mr. Jeffery's line has not through cars on; no train. We even handle them on the Overland Limited now.

Q. Now, take another case. The rates on passenger business, winter tourists business, from St. Paul and Minneapolis, through Kansas City, and southwest, connecting with the Southern Pacific to California, are the same as by the Union Pacific, are they not?

A. I didn't quite catch that. You mean from St. Paul?

Q. St. Paul and Minneapolis; and tourists cars are operated from St. Paul and Minneapolis tri-weekly?

A. Yes, sir. There are tourist cars from St. Paul and Minneapolis
out over the Southern Pacific, and via Kansas City and the
630 Santa Fe, and the other lines to California.

Q. At the same rates?

A. I mean, for instance, the Omaha line had a tourist sleeper from Omaha, and then over the Union Pacific and the Southern Pacific.

Q. And also by way of Texas?

A. I am not sure whether we have that now, a through car from St. Paul by way of El Paso, or not, but we have had.

Q. You had in the past?

A. Yes, sir.

Q. Two years ago, for instance, the Chicago Great Western operated that way?

A. They never closed those gateways to any one.

Q. So that the entire passenger business of this country practically to the Missouri River can to a greater or less extent, and does go via the Southern Pacific or the Union Pacific, as the passengers wish to go or come?

A. The entire passenger traffic in the territory described could at will select any one of the lines, the Southern Pacific, the Union Pacific, the Rio Grande and the Sante Fe, and those lines have through service for the same rates.

Comr. LANE. Does that include the Northern Pacific and the Great Northern as well?

WITNESS. If a passenger goes out by way of St. Paul and Portland, and over what is called the Shasta route of the Southern Pacific, and back, there is another—there is an arbitrary charge for that 778 miles between Portland and San Francisco, a higher rate than if he went direct.

Comr. CLEMENTS. What does that amount to?

Witness. That would be a little less than 2 cents a mile
631 for the round trip; about $15 to the round trip, I think $7.50 for a one-way ticket, on account of the excessive haul; a little less than 2 cents a mile.

Q. Hasn't that been in existence all the time?

A. Yes, sir.

Q. So that a passenger cannot go by way of the Northern Pacific at the same price?

A. It has not been changed to my knowledge—the passenger rates to the coast have not been materially changed, to my knowledge, in 25 years.

Q. But the rates via the Union Pacific and the San Pedro lines are the same?

A. Yes.

Q. And the rates via the Union Pacific and the Navigation Lines to Portland are the same?

A. How is that?

Q. And the rates via the Union Pacific and the Navigation Line to Portland are the same?

A. Well, the Union Pacific and the Navigation around over the Union Pacific through to Portland?

Q. Yes; they are the same as the rates via the Southern Pacific?

A. You mean around that way to San Francisco?

Q. Yes.

A. No.

Q. They are not the same?

A. No. There is a difference in that rate, an arbitrary on account of the Shasta route, by reason of that excess of 778 miles haul.

Q. Has that always existed?

A. Yes. It was higher——

Comr. Lane. Did I understand you to say that the passengers rate to California had not changed in twenty-five years?

Witness. No. I mean this way, that the method of applying the rates has not changed materially. But they have changed very greatly because since 1901 we have had a fifty dollar round-
632 trip rate to the Coast freely, and then since 1901 we have had a remarkably low colonists rate, as may be evidenced by the increased sale of land and business there; rates as low as $25; and now I believe ordinarily $33 through, the lowest through rates in the world.

Q. Prior to 1901 there was at times a very sharp competition by the various Pacific Lines for this business, was there not; and rates at times were reduced very much?

A. Well, prior to 1901 I was connected with the Vanderbilt system, the Big Four Lines, in a strongly competitive territory from here, and we furnished business for the Southern, as well as the Northern Route, via Union Pacific, as it does today, and prior to that time on one occasion there was quite a severe rate war that I remember between the Santa Fe and the Southern Pacific Lines and its

connections. Ordinarily the rates to the Coast have been fairly firm, with the exception of surreptitious cutting, because they are very low; the round trip to the Coast has always, since it was $110, been less than 2 cents a mile that is very low, taking into consideration the service performed.

Q. That is on the long haul?

A. Well, the lowest rates in the world exist in California itself. The Southern Pacific road didn't get 2 cents a mile for some of it, and rarely got 3 cents a mile; while the rate between Philadelphia and New York is 3 cents and between Chicago and Buffalo is 3 cents a mile.

Q. You mean locally in California they do not get 2 cents?

A. Locally in California; in fact they don't get 3 cents a
633 mile locally in California today on some of their rates.

Q. Now, the emigrant business from eastern seaports to California points is quite large at times, isn't it?

A. Yes, sir.

Q. And that is a business which the railroads have in the past years had sharp competition for, isn't it?

A. Well, yes; territorially speaking I would say so, but not in the past number of years to California. There has been no particular competition for that, because when there was competition there were such crimes committed by people, hotel-keepers and runners in New York, that an attempt was made to control that business and have it in the hands of the United States Government officials at the Island, and they sent it out over various lines, guarding them from the assault and robbery that had been committed so that there has never been very much of a competition on that business.

Q. Well, there used to be years ago.

A. It is a long time ago.

Q. You don't remember, do you, prior to 1901, during those years when the Southern Pacific was making a struggle to open its line as a popular California route, there was a great deal of competition in those rates at that time; don't you remember that?

A. You mean emigrant?

Q. Oh, in all kinds of business.

A. To the Coast?

Q. Yes; to and from California points.

A. I don't think I quite catch that; because the Southern Pacific was the old and direct line to the Coast.

Q. I am talking now about the Sunset route.

A. Well, I mean via that line. The Southern Pacific has
634 always opened its line to its connections in a most peculiar manner; even when it was the only line to the Coast, its divisions were practically on a mileage basis via Ogden, just as they are today.

Q. I am speaking of the Sunset route, not the Ogden Line.

A. It was the same with the Sunset route.

Q. I know that they opened their line to all eastern lines, in fact invited the eastern lines by the most liberal allowances, didn't they, to use that line?

A. No. I don't think anyone has ever accused them of excessive liberality.

Q. I thought you said that it made very liberal mileage divisions?

A. Not liberal, not excessively liberal.

Q. What do you mean by liberal?

A. What I said was that it was practically on a mileage basis.

Q. You said liberal divisions?

A. I may say that they are liberal divisions, but I never heard that charge specifically, that they were excessively liberal in naming divisions.

Mr. MILBURN. This is the first time that I have ever heard the charge of liberality resented.

Q. Then they were not liberal; is that it?

A. Yes; they were fairly liberal, because they were on a mileage basis. If you run up to the connection of a road and you have the use of that road beyond that point on a mileage basis, it is just as good as if you had your own road. You couldn't do it any better; you escape the maintenance of that road, and you gain the benefit of it.

Q. Who has the advertising for all these lines, the passenger lines?

A. Each officer of each line individually.

635 Q. Doesn't Mr. Stubbs have general charge of the advertising?

A. No, sir.

Q. Isn't it divided up, any expense?

A. Oh, is a division made?

Q. Yes.

A. I can give you it definitely. Once a year our lines meet and decide on what they will have to have for the next year in an advertising way, and they ask for an appropriation, and they get it, and they must say at the time what they propose to use it for, and then they are held to a strict use of the money in that way.

Q. Whom do they ask for this appropriation; that is the point.

A. The appropriation—the request comes to Mr. Stubbs for approval.

Q. And Mr. Stubbs has to approve or disapprove it?

A. Yes, sir.

Q. And he makes the division of the expense between the various Pacific lines?

A. No, he does not.

Q. That so appears?

A. No, it doesn't appear. Mr. Fee asks for his money and Mr. Lomax asks for his money.

Q. You say there is no common expense that is divided by Mr. Stubbs between the lines, do you?

A. Regarding advertising matter, no, sir.

Q. None whatever?

A. No, sir. Not only is that taken into consideration, but our connections also confer regarding the advertising of through trains. For instance, I have a request now from the Milwaukee & St. Paul road, to whose through service I have just referred, asking if we would participate with them in the expense of this through advertising?

Q. Well, the requisitions have to go to Mr. Stubbs for approval or disapproval?

A. Yes, sir.

636 Q. Have you seen a letter which was put into evidence in New York where Mr. Stubbs divided up certain advertising expenses and proportioned them to each line for the year? You haven't seen that letter?

A. No, sir.

Q. Well, if he did that you would not deny it?

A. Well, I wouldn't deny anything that Mr. Stubbs did.

Q. I didn't think so. That is all.

Mr. MILBURN. It is quite conceivable, isn't it, that as these local officials make their requisitions on Mr. Stubbs, that he should submit to the executive committee of these companies in New York for approval the aggregate appropriation, and show in that statement the division that had been made in the manner you have indicated, isn't it?

WITNESS. That is just the way it is done.

Comr. CLEMENTS. Now, in respect to the regular passenger traffic, how do the rates now compare with what they were ten years ago, leaving out the emigrants and the homeseekers and traffic of that kind?

WITNESS. They are lower, because recently our lines in Utah, Wyoming, California, Arizona and New Mexico reduced their rates. The facilities were better and the traffic was larger and they were reduced from 5 cents to 4 cents locally.

Comr. HARLAN. What about the reduction of through rates, did that enter into it?

WITNESS. No, it did not figure to any very great extent in the through rates.

Comr. HARLAN. How do the through rates today compare with the through rates ten years ago?

Comr. CLEMENTS. Say from New York to San Francisco,
637 or the eastern territory?

WITNESS. Well, I think the through rates, say one way passenger rate, and the round trip tourist rate, which grants to everyone stop-overs ad libitum, during the last fifteen years the rates have been so very greatly reduced by reason of these very many round trip convention rates, that I would say the aggregate rates for the last fifteen years for through business have not been two-thirds as high as they were before.

Comr. CLEMENTS. Leaving out the conventions and the home-seekers and the immigrants, and all those special classes, how about the regular passenger rates for ordinary travel?

WITNESS. I do not think that the through rate from the River to California on the one way ticket has been reduced in that period. I am not sure when the last reduction did take place, but Mr. Lomax can give you that definitely.

By Mr. LOVETT:

Q. All those rates that you put in are open to all connections, are they not?

A. Very freely to all connections.

Q. Prior to 1901, which seems to be the date which Mr. Kellogg takes as eventful in this examination, how did the Union Pacific work its California passenger business, over what lines?

A. Over the Southern Pacific.

Q. From Ogden?

A. From Ogden.

Q. Has there been any change in that condition since then?

A. None whatever.

Q. Has there been any change in the policy respecting the interchange of business, joint passenger business and joint passenger rates with connecting lines since 1901?

638 A. None that I know of. They were free and open to all connections in 1901 as they are today.

Q. And prior to 1901?

A. And prior to 1901, even when the Southern Pacific was the only line into California.

Q. And this rate war that you referred to as having occurred at one time between the Atchison and the Southern Pacific, on which side was the Union Pacific in that contest?

A. Well, I should say very strongly on the Southern Pacific side.

Q. On the Southern Pacific side?

A. Yes, sir, as to connections, as it would be today.

Q. It would be impossible, consistent with its interests, to take sides with the Atchison in any such contest, would it not?

A. Yes, sir, it would be physically impossible. It could not do so at all.

Mr. LOVETT. I believe we have no further questions.

(Witness excused.)

639 Mr. SEVERANCE: I next offer in evidence, pursuant to our stipulation, the testimony given by J. A. Munroe, a witness before the Interstate Commerce Commission who testified on the 10th day of January, 1907, at the city of Chicago. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Munroe were upon the stand giving the same testimony?

Mr. EVARTS. Yes.

J. A. MUNROE

testified:

Examined by Mr. SEVERANCE:

Q. What is your official position, Mr. Munroe?

A. Freight traffic manager of the Union Pacific lines east of Green River.

Q. How long have you held that position?

A. I do not recall the exact date, two or three years.

Q. Prior to that, what was your position?

A. Freight Traffic manager of the U. P. R. R.

Q. How far west did your jurisdiction go then?

A. Ogden.

Q. You lost jurisdiction over the lines west of Green River, two or three years ago?

A. Partially I did, but not entirely so.

Q. What relation have you to the business west of Green River now?

A. Mr. Reeves as general freight agent of the Oregon Short Line has jurisdiction locally over the U. P. lines subject to my general approval. I leave these local matters very largely in his hands,
640 but as to other business I am at liberty to confer direct with the lines west of Ogden, the Southern Pacific.

Q. Mr. Reeves——

A. J. A. Reeves.

Q. Does he have jurisdiction over the Southern Pacific as far west as Sparks?

A. I understand so.

Q. He also has jurisdiction over the Union Pacific as far east as Green River?

A. He does.

Q. And over the Short Line?

A. Yes, sir.

Q. How many years were you general freight agent of the Union Pacific?

A. Well, I have been freight traffic manager of the Union Pacific since the organization of the present company, February 1st, 1898, and I was also Freight Traffic Manager during the receivership, back in 1893 and have been associated with their traffic department since as far back as 1882.

Q. What was your position prior to 1893, were you general freight agent?

A. I have been general freight agent. I do not recall just the date that my title was changed from G. F. A. to Freight Traffic Manager.

Q. How many years have you been in charge of the Union Pacific traffic locally, there at Omaha, as either general freight agent, or general freight traffic manager?

A. Well, I have been identified with the traffic department, as I said before, since 1882, the latter part.

Q. But at first, what was your position?

A. Assistant general freight agent.

Q. When were you made general freight agent?

A. I do not even recall that date, but I can give you those dates if you want them.

641 Q. It was a very short time after 1883?

A. No, in October 1884 I was transferred to Kansas City and made first assistant general freight agent making a specialty of the Kansas Division lines as then in operation. I remained there until January 1st, 1886, and on my return to Omaha I was made general freight agent. Just how long that continued until I became freight traffic manager I am not clear on at this moment.

Q. You have been general freight agent or freight traffic manager since the first of January, 1886?

A. Yes, sir.

Q. The first of January, 1886?

A. 1886.

Q. Now, to whom do you report?

A. Mr. Stubbs.

Q. And you have done so since July 1st, 1901?

A. I have.

Q. Prior to that time, to whom did you report?

A. To Mr. Burt as president.

Q. As president of the Union Pacific?

A. Yes, sir.

Q. Previous to that time you commenced reporting to Mr. Stubbs, previous to the time you commenced doing that, and after you had been made general freight agent, you had at all times reported either to the general manager or to the president of the Union Pacific itself, had you not?

A. I reported to the receivers during the receivership, and to President Burt subsequent thereto.

Q. And prior to the receivership?

A. To the vice-president, general manager or general traffic manager, as the case may be.

Q. So that you did not, until July 1st, 1901, you did not report to any person who was an officer of any other railroad

642 system outside of the Union Pacific?

A. I did not.

Q. What is the nature of the reports which you make to Mr. Stubbs and how frequently do you make reports to him?

A. We have no specific dates for making reports to him. I undertake to keep him advised of conditions and fully posted as to what is current in the way of events, and what is going on.

Q. That is, you keep him as fully advised as you formerly did the general manager, when you were under his supervision?

A. I do.

Q. So that Mr. Stubbs is at all times kept in close touch with all operations?

A. He is.

Q. Now, Mr. Munroe, prior to the time that Mr. Stubbs took charge of the traffic, it was your custom, was it not, to represent the Union Pacific at freight meetings with other roads?

A. I did often.

Q. For very many years?

A. Yes, sir.

Q. You remember, do you not, prior to 1887 (the time the Interstate law was enacted) that there had been a pool of the transcontinental lines?

A. I did not come in close contact or have any discussion about those pool matters. Transcontinental business, under those conditions, was not within my purview. I do not know anything about it, and did not have anything to do with it.

Q. Well you knew about it, didn't you?

A. I had a very general knowledge, but it was so superficial, that I could not give any information of any value on it. In fact I paid no attention to that business at that time.

643 Q. So you did not attend the meetings at which these matters were discussed?

A. I did not on the pool.

Q. But, after January 1st, 1886, down to the time Mr. Stubbs took charge, you did usually represent the Union Pacific at their freight meetings?

A. I did at some of the freight meetings, and more especially what we call the trans-Missouri meetings referring to the traffic of Utah, Colorado and East. The transcontinental meetings were largely attended by my superior officers. I did attend some.

Q. After you became traffic manager you attended the meetings?

A. Yes, I attended several.

Q. Now in those meetings you represented no one but the Union Pacific interests, did you?

A. That is all.

Q. At those meetings the Southern Pacific was separately represented, was it not?

A. Let me correct that a little bit there. Prior to the receivership of the Union Pacific (which was October 13th, 1893) we did represent the line from Granger on to Portland.

Q. That is the Portland line?

A. But I have had no direct connection with the O. R. & N. Company since July 4th, 1894. Nor have I had any connection with the Oregon Short Line since the date of the formation of the new company. I do not recall the exact date, but it is several years.

Q. But the Southern Pacific was represented in those meetings by another gentleman when Mr. Stubbs was not there, was it not, represented by Mr. Stubbs, or some one for him?

A. Some of the Southern Pacific officials.

644 Q. Now, since Mr. Stubbs' appointment and his coming here, has it not been customary for him, or one of his assistants, to represent both the Union and the Southern Pacific at these meetings?

A. No, there has been no material change in the representation. Each company has had its representative at the meetings. I am referring now to the trans-continental matters.

Q. And you come to the meetings as well?

A. I come or Mr. Wood or someone, as the case may be. We always endeavor to have direct representation of the Union Pacific road at each one of those transcontinental meetings.

Q. But, of course you are under the supervision and direction of Mr. Stubbs?

A. Certainly.

Q. And any suggestion he would make to you as to the attitude you were to assume at these meetings, of course you would follow?

A. Certainly.

Q. Now I think you just stated that you had nothing to do with the freight business of the Short Line or the Oregon Railroad and Navigation Company?

A. I have not.

Q. But you had formerly?

A. Under the old organization, prior to 1898, but not for a number of years.

Q. Do you have a general freight agent under you?

A. I do.

Q. At Omaha?

A. At Omaha.

Q. Who is that?

A. Elmer H. Wood.

By Mr. LOVETT:

Q. Has there been any change in your relations to these conferences since Mr. Stubbs' jurisdiction was extended over the Union Pacific, Mr. Munroe?

A. There has not.

645 Q. You attend as many, or as great a percentage of them, since as before?

A. Precisely.

Q. Over what line does the California business or the transcontinental business of the Union Pacific move?

A. Largely over the line from Council Bluffs west, through Green River, and to Ogden, in connection with the Southern Pacific as to California, transcontinental business for Oregon points, via Green River, Granger and Huntington and also for Southern California points via the Union Pacific to Salt Lake and San Pedro line and points south thereof.

Q. When was the San Pedro line opened for through business?

A. About two years ago.

Q. In 1905?

A. That is my recollection.

Q. The line was then competing——

A. May 1st, I think, 1905.

Q. Has there been any change in the movement of that traffic, I mean excluding the San Pedro line, leaving that out?

A. No, sir.

Q. How long has it moved that way?

A. Ever since I had anything to do with the Union Pacific.

Q. No change has been made in the movement since the jurisdiction of Mr. Stubbs was extended over the Union Pacific?

A. Some of the business that is moved down by way of the San Pedro line giving the Union Pacific tonnage by reason of it on account of the inability of the line via Sacramento to haul that business, but the relation to the pro-rating arrangements via Ogden, as between the Union Pacific and Southern are the same as they were.

Q. The only change being that resulting from the completion of the San Pedro line?

A. That is it.

646 Q. You testified I believe that prior to the receivership of the Union Pacific line (which occurred I think you stated in October, 1903), your jurisdiction extended over the line to Portland, over the Oregon Short Line and the Oregon Railroad & Navigation Company?

A. Yes, sir.

Q. At that time, how did you move your transcontinental business?

A. Our California business moved by way of Ogden, and the other business by the way of Granger and Huntington.

Q. Has there been any change since then?

A. No.

Q. Did any considerable amount of traffic for San Francisco or other California points ever move by way of Portland, and then by steamer?

A. It did not.

Q. Is that a practicable route and a feasible route for the Union Pacific, Mr. Munroe, as against the connection with the Central Pacific?

A. We never have so considered it.

Q. Why?

A. Because we have always felt it would always cost us more to route San Francisco traffic via Portland, that we would lose more than we would make by it. The line is unnatural in this, that when you arrive at Portland, you are about as far from San Francisco as you are at Ogden. Again, San Francisco is the only point on the Pacific Ocean from which the boats from Portland, or at which boats from Portland touch. There are in California a number of points in common with San Francisco, to which a very large and handsome tonnage is attached, and we always felt that our possible gain by using the Portland route for San Francisco business would be much more than offset in value to the Union Pacific by the resultant action. There was a large business eastbound—I am

647 giving you the thoughts that occurred to me at the time. If I am too long about it stop me.

Q. No, I wish you to make it as full as possible.

A. There were at that time about 8,000 carloads of perishable fruit at points substantially local to the Southern Pacific, the routing of which to the Missouri River we satisfied ourselves they could control, and we had hard enough work to hold our share of it anyway. We did not wish to add to our burdens and we felt that the line by way of Portland was not on a parity in service with the line via Ogden; that we would have to have a differential to San Francisco to do any business and the bad effects of the differential would cost us more than the business which we would gain by the Portland route would represent. To illustrate, we have never felt that it would be wise to accord to San Francisco a lower rate via Portland and water, than we accorded Portland direct for the all-rail service. We did not care to advocate what we thought, an unnatural freight rate basis of adjustment by charging the Portland man for less service more than we charged the San Francisco man for the greater, when both competed more or less in the territory intermediate as between Portland on the north and San Francisco on the south. Those are some of the reasons which actuated us not to open the Portland line for business.

Q. If you were to attempt to open that Portland line even by a reduced rate to San Francisco, I suppose, of course, that the reduction would be met by the Central Pacific?

A. Certainly.

Q. And the same relative facilities would continue?

A. They would.

648 Q. Well now, the interchange as to the volume of traffic, the interchange with the Central Pacific at Ogden, and the amount of revenue derived from that; how would that compare with the volume and the amount that under any conceivable practicable conditions you could hope to get by way of Portland?

A. Oh, very much larger.

Q. What do you know of the organization of the Oriental and Occidental Steamship companies, Mr. Munroe?

A. Scarcely anything. Oriental traffic as far as the Union Pacific is concerned, is left in the hands of our direct western connection serving the port of San Francisco.

Q. How long has that been the case?

A. Always.

Q. You mean the Southern Pacific?

A. I do.

By Mr. KELLOGG:

Q. All of it?

A. There is a limited amount of that Oriental traffic which is moved by way of Portland; limited, for the reason that the Portland sailings have averaged about one a month, sometimes an extra ship here and there, but there has been no regularity of the sailings via Portland, as there has been via San Francisco. We have had an

average sailing from San Francisco of about one every ten days, and we have had at times nine first-class ships in that service.

By Mr. LOVETT:

Q. What ships from San Francisco for the Asiatic ports have you worked?

A. The Pacific Mail, The Oriental & Occidental and the Japanese lines.

Q. You have worked all of those lines?

A. Yes, sir.

Q. In handling such Asiatic traffic as comes to you, as
649 originates on your line, or comes to you from the east, have you always worked that by way of San Francisco?

A. Always. We had some, as I said, a limited amount by Portland.

Q. Has that amount that has gone by way of Portland—is that substantial or insignificant? I want to know something about the relative amount.

A. It is very small compared with that which moves via San Francisco.

Q. How long has that condition been in existence?

A. Always as far as I know, except this, that the Portland line is more or less of a new creation. It has not been in operation I should say, beyond the last ten or twelve years. The San Francisco line has been in operation for years prior to that.

By Mr. SEVERANCE:

Q. How are the rates by the San Pedro line over to the East from your line, from Southern California points, as compared with the rates via the Southern Pacific and Sacramento?

A. They are uniform.

Q. They are just the same.

A. They are.

Q. But at the present time you say you get a larger percentage of the revenue by sending the stuff over the San Pedro?

A. No, I said we were getting some increased business by reason of having the shorter line. To explain that, the distance from Ogden to Los Angeles via Sacramento is substantially 1100 miles, whereas it is a few hundred miles shorter via Salt Lake.

Q. Quite a number of miles shorter, isn't it?

650 A. About 300. The Union Pacific found that business very sharply competitive. The strongest competitor is the Atchison line via Albuquerque and the longer line via Sacramento has ruled us out of a large amount of it in the past because we could not equal the service of the Atchison road. With the San Pedro line we are better fixed and we can duplicate it.

Q. Then there has been competition down there between the Santa Fe and the Southern Pacific in the way of quick service, even if there has been no competition in rates.

A. There has always been competition in Los Angeles.

Q. Now do you get the same division of the through rate with the San Pedro that you do with the Southern Pacific on Los Angeles business?

A. They are in different groupings.

Q. Well, take Los Angeles, that group.

A. There may be some variance, I would not want to testify from memory on those percentages. We have a group I know, that Los Angeles group as far as the Southern Pacific is concerned, which commences up in Central California. There may be some variation at specific points.

Q. The Southern Pacific have to haul commodities 300 miles further than the San Pedro to deliver them to you. Does the Southern Pacific get any more for doing that than the San Pedro does for hauling it the lesser distance?

A. The original basis, as I recollect it, was a mileage pro-rate from Omaha, via Sacramento and Los Angeles. The application of that same principle, via the shorter line, would give the Union Pacific proper of course more money on an individual shipment.

651 Q. Is it divided on the mileage basis, or does the San Pedro line get the same amount of revenue?

A. My recollection is that it is a mileage basis.

Q. That the through rate is just the same?

A. The through rate is just the same.

Q. Consequently if you can divert traffic via San Pedro you can get the same money out of it?

A. Yes, sir.

Q. Could you make up a statement of that, showing those divisions?

Comr. LAME. You have the division tables in your office, have you not?

WITNESS. I presume we have.

By Mr. SEVERANCE:

Q. Now, Mr. Munroe, you have stated in answer to Judge Lovett that no substantial amount of the California traffic ever moves by Portland. Now the divisions with the Central Pacific line were satisfactory to you, were they not, from the standpoint solely of the Union Pacific?

A. Yes, sir.

Q. Now don't you know it to be a fact that the possession of that line to Portland, would be influential in preventing the Southern Pacific (if it was independent from you) from making an unfair demand on you as to divisions?

A. I don't think I catch the idea.

Q. As a railroad man, don't you know that the possession of a through line to the coast so that you could go into that San Francisco business, if you saw fit, by way of Portland, was a strong weapon in your hands to prevent the Southern Pacific from making an unfair demand on you as to divisions?

652 A. No, I don't think it would be.

Q. You do not think it was of any value whatever?

A. I think there was a small value to the Southern Pacific in that fact that they have a line from Ogden to Portland, via Sacramento, but the total amount of business to and from the east and Portland handled by the Shasta Route was so insignificant as compared with the direct lines that I do not think it would have any influence at all upon the Southern Pacific, on their traffic.

Q. You do not understand my question. My question is, was not the fact that the Union Pacific in the old days, when it was not amalgamated with the Southern Pacific, that the Union Pacific had a line composed of itself, the Oregon Short Line and the Oregon Railroad & Navigation Company; and a line of steamers from Portland to San Francisco, the fact that it possessed such a line, was not that a weapon in its hands which would prevent by self interest, the Southern Pacific from demanding an undue or unfair share of the through rate from the Union Pacific?

A. I do not think it would prevent the Southern Pacific from very materially advancing their division on the Union Pacific interchange.

Q. Will you answer my question just as asked it?

A. Well, I will have to say no.

Q. You say no?

A. I do.

Q. You do say then that the possession of a through route to the coast, to Portland, with steamships from there to San Francisco is of no value whatever to the Union Pacific as a weapon against

653 an unfair exaction on the part of the Central Pacific?

A. I don't say it is of no value, I say it is of a minimum value.

Q. You said a moment ago——

A. Pardon me. You ask me if I thought I could use that as a club, against an unfair division. I say I do not think it is possible. I do not think the possession by the Union Pacific of a Portland-San Francisco line would make it possible for that company to prevent the Southern Pacific from materially advancing their percentages of the through rates for the service west of Ogden.

Q. Now let us see. The route to San Francisco by way of Portland, and the sea, is not nearly so roundabout a route as the route to San Francisco by the Sunset line and the Morgan steamers, isn't that true? There is not naturally near the difference?

A. It is about twice as far from Ogden to San Francisco, as it is direct.

Q. That is not anywhere near as much additional mileage as there is by the Morgan line, around the south coast of Florida, to the Southern Pacific, up to San Francisco as against the straight line across the continent.

A. I will admit——

Q. Isn't that so? It is not anywhere near as great a difference in mileage?

A. No, you are not correct on that.

Q. I am not?

A. No.

Q. What is the difference in mileage between the Sunset route, taking in the Morgan line of steamers to New York and a straight line by rail across from New York to San Francisco?

A. My recollection is that the distance by sea from New York to New Orleans, is 1,800 miles and from New Orleans to San Francisco 2,500; in round numbers 4,300 miles. From New York via Chi-
654 cago and Omaha, to San Francisco, it is 912, 488 and 1,003 and 794.

Q. That is 3,100 then, a difference of 1,200 miles?

A. Whatever it may be.

Q. Is there a difference of 1,200 miles in favor of the route from Ogden direct to San Francisco as against the route around via Portland?

A. There is not.

Q. Then I was correct, and you were incorrect?

A. No.

The CHAIRMAN. It is 1800 miles from New York to New Orleans.

WITNESS. And 2500 miles from there to San Francisco. I understood your question (without wishing to argue this) that the distance was "many times greater" or something of that nature.

By Mr. SEVERANCE:

Q. Now, for many years there has been a competition via the Sunset route and that line of steamers, not only to the extent of putting in the same rates from New York, but in addition the Southern Pacific interests have paid the freight from points out nearly to Pittsburg and Buffalo into New York and taken it around, and that would be a difference of 400 miles more to that haul, would it not?

A. It would.

Q. Now with that object lesson in front of you, don't you think that a good active working of that line via Portland and boats in San Francisco would have made it impossible from motives of self-interest alone for the Southern Pacific to have demanded an unfair division of the through rate as against the Union Pacific?

A. No.

Q. You are still of the same opinion, are you?

A. I am.

Q. Now you say that the Portland and Asiatic Company does carry some Oriental traffic?

A. It does.

655 Q. Does that come to you?

A. Part of it.

Q. Where does the rest of it go?

A. They have a large local traffic from Portland in flour, which represents the bulk of their outward bound tonnage. Their inward

tonnage consists of the products of the Orient, notably tea and rice, curios and silk occasionally, and that is scattered all the way from Portland east, according as the point of consumption varies.

Q. And you bring that over your lines?

A. We handle it over our lines.

Q. The bulk of it?

A. The bulk of it; that is, the Portland part of it.

Q. That has been the case—east of Portland the Asiatic company or its predecessors—that has been the case for a period of 10 years or so?

A. Approximately.

Q. For several years prior to 1901?

A. Yes, yes.

Q. The effort was made, was it not, to send as much traffic as could be sent over that line because the O. R. & N. owned the line?

A. Yes; they tried to fill their ships.

Q. Both ways. How often did you say the sailings were?

A. About once a month.

Q. You advertise them once every 20 days, do you not?

A. I have not seen the advertisement recently, and I do not know what it is now.

Q. Did you not find prior to 1901 that the Southern Pacific was competitive with the Union Pacific, the Short Line and the Oregon Railroad and Navigation Company into Portland?

A. Just the same as it is now.

656 Q. Is it competitive now?

A. It is.

Q. Then there is competition?

A. There is.

Q. Then it is not a fact, as was suggested by Mr. Stubbs yesterday, that there never had been any competition between the Southern Pacific and the Union Pacific. You think there is competition now, do you?

A. I think there is competition between various lines.

Q. Business moves from New York and Atlantic seaboard points by the Sunset route up to Portland?

A. I cannot testify as to that, I do not know.

Comr. LANE. I did not understand Mr. Stubbs to say that there was not any competition.

Mr. SEVERANCE. He said both. He said at one time that there never had been any, and at another time, I think he said, that there was still competition. It will all be found in the record.

Mr. MILBURN. To the record we appeal.

By Comr. CLEMENTS:

Q. Is there any pool or committee or agency or official to which the several transcontinental roads, or some of them, report their tonnage or their business, either on the basis of mileage or revenue or ton-

nage or something of that kind so that each one of you may know approximately about what percentage of the whole you are getting?

A. No, sir.

Q. Has there ever been such an institution?

A. There used to be years ago a statistical compilation of figures, but there has not been now as I recollect for several years.

Q. Do you have any idea from time to time as a representa-
657 tive of the Union Pacific road, what your competitors on each side of you are doing, whether their business is growing or decreasing, I mean their proportion of the through business east and west?

A. We watch it with very great care through solicitors actively in the field, both at the points of destination and points of origin. That is part of our business to keep just as close tab on them as we can by every legitimate method.

Q. But there is no system of reporting one to the other?

A. None whatever.

Q. Or to any agency?

A. No, sir.

Q. Whereby the various officers can be kept posted?

A. No, sir.

Q. How long since that was done?

A. Why, several years, I don't know the exact date.

Q. Has it been done since 1900?

A. I do not think it has.

Q. Well, do you know whether or not the proportion or percentage generally of the Union Pacific line, as you represent it, is greater or less than it was in 1900?

A. I know that our business has been steadily increasing both in the total and in specific cases. I satisfy myself with that showing, and such information as I can get from other sources as to what our competitors are doing.

Q. Do you think you are getting a greater proportion of it now than before?

A. I think we are.

Q. Can you approximate about how much your proportion has increased in that time?

A. No, sir, I cannot.

Q. Can you make any estimate about it?

A. Why, I would think that our westbound takings of trans-
continental trade in percentage would be five to ten per cent.
658 more than they used to be.

Q. Than they were how long ago?

A. Ten years ago.

Q. Do you have any basis for a like estimate in regard to the Sunset route?

A. No, sir, I have not any information as to the Sunset.

By Mr. SEVERANCE:

Q. You say that through your commercial agents you keep tab on on your competitors as far as you can?

A. Yes, sir.

Q. What roads do you mean by your competitors?

A. I mean—well, of course, it depends on the business.

Q. We are talking about trans-continental business.

A. Speaking now of the San Francisco business for the purpose of illustration, all lines east of Ogden other than the Union Pacific; all lines east of El Paso, including the through route of the Sunset line from New York to San Francisco, and incidentally, of course, all the lines operating via the northern gateways.

Q. Now, you say that you go to some trouble and expense to have your commercial agents put you in touch with all the information they can get with reference to the business done by those competitors of yours. That is true, isn't it?

A. It is.

Q. You regard that as of advantage to you in conducting competition, don't you?

A. We do.

Q. And you regard it as of advantage to you to keep that information as far as possible from your competitors, don't you?

A. Although I have——

Q. As to your own line I mean.

A. We do not announce it to them, but we have no idea but
659 what they get it.

Q. They get it if they can?

A. Certainly.

Q. You don't want them to get it?

A. I would not offer it to them.

Q. In the case of one of those competitors, the Southern Pacific that you call a competitor, you have the same commercial agent at Chicago, the same commercial agent at Pittsburg, the same at Cincinnati busily engaged in covering up this information. They are also engaged in gathering up this information for you in reference to the business of your competitors. You don't try to keep that information then from the Southern Pacific, do you?

A. We do not regard the Sunset line as a competitor on Chicago business.

Q. Oh, that is it.

A. No, sir; and we never have.

Q. It is a fact, is it not, that you don't make any very great effort to keep this information from the Sunset management, or the Southern Pacific management, not any such effort as you do to keep it from the Atchison? And you don't have to hunt half as far to find out what the Sunset is doing, as you do to find out what the Atchison is doing, do you?

A. We don't ask anything about the Sunset. I do not recollect an average of one communication a month to a Sunset man. They are just as separate and distinct from us as the Atchison road is.

Q. And I suppose Mr. Niemeyer is very separate and distinct, too?

A. No, he is a joint agent.

Q. He is not separate and distinct?

A. He is not.

660 Q. You think that he finds as agent of the Sunset what Mr. Niemeyer as agent of the Union Pacific is doing?

A. I don't think I ever asked Mr. Niemeyer for a bit of information as to the Sunset takings in his territory, because——

Q. Now then, sir, don't you know——

Mr. LOVETT. Just a moment. Because what?

WITNESS. In the first place, as I have said, we have never regarded the Sunset line as a competitor on Chicago business.

Q. Did you hear the testimony to the effect that a large amount of traffic has moved via the Illinois Central to New Orleans and thence to the Coast?

A. Under abnormal conditions I recognize that the Illinois Central has taken some business. I say the Illinois Central simply as a line between here and New Orleans, but they have taken it for the reason, almost by 100 per cent., of congested conditions by the normal and direct line. I never can be convinced that when you have to carry the freight from Chicago to New Orleans and when you get to New Orleans you are farther away from San Francisco than when you started, that that line will be an active competitor of the Council Bluffs-Union Pacific-Ogden route.

Q. What about the lines from Kansas City to El Paso?

A. The lines from El Paso are much more a competitor.

Q. They are competitive to the Union Pacific?

A. They are.

Q. Chicago traffic moves that way, doesn't it?

A. It does, and we recognize that competition as an active and controlling force.

Q. Then as to Chicago business, the Union Pacific on the one
661 hand, and the lines made up from here to El Paso and the Southern Pacific from there on are competing lines?

A. They are.

Comr. CLEMENTS. Isn't there some territory somewhere south of this where both of these lines would naturally be competing?

WITNESS. The line naturally falls about the Ohio River.

Mr. SEVERANCE. Anything that originates south of the Ohio River would naturally get better service via New Orleans than via Omaha, and anything that originates north of there would go via Omaha.

Comr. CLEMENTS. Cincinnati is about on the dividing line?

WITNESS. About on the dividing line.

By Mr. KELLOGG:

Q. You call that a natural dividing line, do you?

A. I do.

Q. And business north of that line has at times moved via the El Paso gateway and business south of that line via Ogden?

A. Occasionally.

Q. And Pittsburg would be pretty strongly competitive territory then, wouldn't it, as it is right on that line?

A. Pittsburg is very strongly competitive.

Q. As between the Southern Pacific and the Union Pacific?

A. As between all the gateways.

Q. Is it not a fact that all points east of Kansas City on each side of that dividing line to the Atlantic seaboard are competitive territory for those two lines?

A. To a limited extent the territory south of the Ohio River is competitive, and the territory north of the Ohio naturally moves by the northern gateways. Most of those places move on parallels.

Q. It don't always.

662 A. It don't always; there is no inflexible rule.

By Mr. LOVETT:

Q. What are the lines leading from Chicago that take business between California and El Paso?

A. The direct line is the Rock Island system, in connection with the El Paso and Southwestern; then the lines radiating from El Paso; the Texas Pacific, with their various connections via such points as Texarkana, Iron Mountain, Ft. Worth, and the M. K. & T.

Q. When those lines competing by way of El Paso get that business, what do they do with it?

A. Deliver it to the Southern Pacific.

Q. Is there any other way for them to get it to California?

A. I do not know whether any of them have prorate arrangements with the Atchison for the back haul or not, but I think not. In practice it is almost entirely Southern Pacific.

Q. The Atchison has its own line from Chicago to California?

A. It has.

Q. When you get this business from them, that is in competition with them, and you get it to Ogden, what do you do with it?

A. Deliver it to the Southern Pacific for California points.

Q. The Southern Pacific has the Pacific coast end of both of these roads, hasn't it?

A. It has.

Q. You cannot make a rate to California without the consent of the Southern Pacific, can you?

A. We cannot.

Q. Now, this Portland business that is in competition between the Oregon Railroad & Navigation Company, and the Southern

663 Pacific of about what volume and importance is that? That has been in competition between the Southern Pacific and the Oregon Railroad & Navigation Company, is it large or small in volume?

A. Very small.

Q. In this contest or possible contest between the Union Pacific and Southern Pacific that Mr. Severance assumes in his questions to you, giving you the Portland route as a club to use on the Southern Pacific on the question of divisions at Ogden and giving the Southern Pacific as a club to use on you, the Denver & Rio Grande, which do you think yould get the worst of that contest, the Union Pacific or the Southern Pacific?

A. The Union Pacific.

Q. Your loss and sufferings would be manyfold greater than the Southern Pacific in that contest?

A. It is very evident to my mind that they would.

The EXAMINER. Will counsel now make their statement in regard to the matter of the adjournment, so we will have it in the record?

Mr. SEVERANCE. It is stipulated that an adjournment may be taken until 10.30 o'clock on the morning of the 5th day of January, 1909.

The EXAMINER. I would like the record to show the ground of the adjournment.

Mr. SEVERANCE. This adjournment is taken because of the illness of Judge Lovett, who is one of the counsel for the Union Pacific, the Southern Pacific, the Oregon Railroad & Navigation Company,
664 the Oregon Short Line and E. H. Harriman, and is the particular counsel to whom has been delegated the duty of taking testimony. He is at present seriously ill in bed, and for that reason we have agreed to postpone the taking of oral testimony until the date stated, so that he may be present.

The EXAMINER. This is at the request of the defendants, is it?

Mr. EVARTS. It is stipulated between the parties.

The EXAMINER. Very well; we will adjourn until the date named, at the same place.

An adjournment was accordingly taken until January 5, 1909, at 10.30 a. m., at Room 515, Custom-House, New York City.

665 ROOM 508, CUSTOM-HOUSE, NEW YORK CITY,
Tuesday, January 5, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Sylvester G. Williams, at the above time and place.

Present on behalf of the complainant, Mr. Frank B. Kellogg, Mr. C. A. Severance, and Mr. G. E. Husted; on behalf of certain defendants, Mr. Maxwell Evarts; on behalf of the Farmers' Loan and Trust Company, Mr. Edward H. Blanc.

Mr. SEVERANCE. Mr. Evarts has asked to have the oral testimony stand over until this afternoon and to go ahead with some of the documentary evidence. We have agreed to that at his suggestion, and will go on with the oral testimony this afternoon. I would like to have you, Mr. Examiner, announce that the witnesses who have been subpœnaed may be excused until two o'clock this afternoon.

The EXAMINER. Very well. The witnesses who have been subpœnaed on behalf of the complainant will be excused until two o'clock this afternoon. You may proceed, Mr. Severance.

Mr. SEVERANCE. I now offer, pursuant to agreement, a portion of the testimony given by Henry Hahn, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record
666 and have the same force and effect as though Mr. Hahn were on the stand giving the same testimony.

Mr. EVARTS. Yes.

HENRY HAHN

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Hahn, where do you live?

A. Portland.

Q. How long have you lived here?

A. Sixteen or seventeen years.

Q. What is your business?

A. Merchant.

Q. Wholesale or retail?

A. Wholesale grocery.

Q. Wholesale grocery?

A. Yes.

Q. What firm are you connected with?

A. Wadhams & Company.

Q. Have you been in that business during the entire period of your residence in Portland?

A. All but about one year; that was at the beginning; about sixteen years.

Q. And where else have you been in business in Oregon aside from Portland, if anywhere?

A. At Prineville, Crook County.

Q. Have you still interests in that part of Oregon?

A. We have, or I have.

Q. What is the nature of those interests?

A. Live stock, cattle business and sheep business.

Q. Mr. Hahn, in getting goods for your store from the east prior to 1901, what lines or road did they come over?

A. Oh, they came over the Union Pacific, the Southern Pacific, the Northern Pacific, and the Great Northern.

Q. Prior to 1901, so you will understand the reason that I
667 use 1901, you will recollect of hearing of the acquisition of the stock of the Southern Pacific by the Union Pacific road, I presume, several years ago?

A. I do.

Q. That was the year. Prior to that will you state whether or not you and your firm were solicited for shipments of goods from the east by these different lines of road that you have mentioned?

A. They were, yes.

Q. The Southern Pacific and the Union Pacific, or the Oregon Short Line?

A. Yes.

Q. And the Oregon Railroad & Navigation Company?

A. Yes.

Q. And the Northern Pacific?

A. Yes.

Q. Also the Great Northern?

A. Also the Great Northern.

Q. And the Southern Pacific and the Oregon Railroad & Navigation as a part of the Union Pacific system had separate solicitors, did they not?

A. Separate organizations; yes, sir.

Q. Seeking to get business for their respective roads?

A. For their respective lines.

Q. At the present time is there competition between these lines in the solicitation of business?

A. Not that is apparent to us.

Mr. LOVETT. In what line?

WITNESS. By the same solicitors.

Q. By the same solicitors?

A. By the same solicitors, yes.

Mr. LOVETT. Between what lines?

Q. I am speaking as between the Oregon Railroad & Navigation and the Southern Pacific.

A. The Union and Southern; yes, sir.

Q. These roads are all represented by a single solicitor, so far as your observations go?

668 A. Yes, so far as we are aware.

Q. And there is no competition between one road as against the other for your business?

A. No, sir; none that we know of.

669 Mr. SEVERANCE. I now offer, pursuant to agreement, a portion of the testimony given by E. Newbegin, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Newbegin were on the stand giving the same testimony.

Mr. EVARTS. Yes.

E. NEWBEGIN

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Newbegin, where do you live?

A. Portland.

Q. And how long have you lived in Portland?

A. About eight years.

Q. Where did you come from when you came to Portland?

A. Seattle.

Q. What is your business, Mr. Newbegin?

A. Agricultural implements.

Q. What is the name of your firm?

A. R. M. Wade & Co.

Q. Do you deal in all kinds of agricultural implements?

A. I can't say that we do. We deal in that class of implements that is used in this territory, but not all kinds.

Q. What kinds do you deal in?

A. Well, plows, harrows, wagons, and drills, garden tools, and such stuff as used on the farm in this territory.

Q. You have a very large warehouse across the river here,
670 haven't you? It may not seem large to you, it seems large to me.

A. Well, that might depend on what would be called large; we have a warehouse.

Q. Well, it extends from one street to the other.

A. Some people might call it large, but some would call it small; a farmer would probably call it large.

Q. Well, it extends through from one street to the other, doesn't it?

A. Yes, sir; it is a whole city block.

Q. And that is the warehouse at which your office is located, isn't it?

A. Yes, sir.

Q. And at which you transact this business.

A. Yes, sir.

Q. What railroad tracks, if any, come by your warehouse?

A. Well, the main lines of the Southern Pacific go by, and we have a switch of the O. R. & N. on one side.

Q. Now, Mr. Newbegin, you recall, do you not, the time that it first became public in 1901 that the Union Pacific had acquired the Southern Pacific stock?

A. Well, I can't say——

Q. I don't ask you to give the date, but do you remember the circumstance?

A. I can't give the date, but like most any one, I am familiar with the newspaper reports of such affairs; but I am not posted on it.

Q. I understand, but you knew at the time the report was made public five or six years ago?

A. I probably knew it at the time, yes.

Q. Yes; now, prior to that time, Mr. Newbegin, over what line of road did you ship your goods from the East?

A. Well, we shipped most of our freight, that is my pred-
671 ecessor had been routing most of the freight Southern Pacific, and I followed his footsteps.

Q. Well, by Southern Pacific, which route do you mean, both routes, or one?

A. No, by Ogden; that is, the major part of it, of course not all of it; but the larger portion via Ogden via Sacramento.

Q. Yes, sir. Did the Southern Pacific connect with some road east of Ogden at that time over which your goods came, aside from the Union Pacific?

A. Well, I don't know in regard to the connection. We used to route our stuff by the Rio Grande to Ogden and some connecting line of the Rio Grande road, I think, from Ogden. I am not positive on those roads back there; I have never been East; it was the Rio Grande road and the Colorado Midland, I think.

Q. And thence over the Southern Pacific to Sacramento and up to Portland?

A. Yes.

Q. Did the Southern Pacific have a separate solicitor of traffic at that time?

A. Yes; I think so.

Q. And did the other roads coming into Portland have solicitors for traffic?

A. How is that?

Q. And did the other lines of roads coming in here have solicitors of traffic?

A. I think they all did from the number of them.

Q. And they were constantly calling on you soliciting business, weren't they?

A. Yes.

Q. From what part of the East do you get your goods?

A. Well, we ship it from various parts. We ship some from Missouri, Indiana, Illinois, New Jersey, Pennsylvania, Mich-
672 igan, Minnesota—different parts of the Eastern States.

Q. Now, Mr. Newbegin, over what line are you getting your goods at present?

A. Well, we ship partly over the Union Pacific and partly the Northern lines.

Q. By the Union Pacific do you mean via the Oregon Railroad & Navigation?

A. Yes, the Oregon Short Line. Of course the Union Pacific gets in here now by the Oregon Short Line and the O. R. & N.

Q. And do you ship now over the Sacramento route?

A. No.

Q. Are you solicited to ship by that route by the agents of the Southern Pacific?

A. Not to my knowledge.

Q. Are you still called on by soliciting agents of the other lines?

A. Yes.

Q. And the Northern lines?

A. Yes.

Q. And the O. R. & N.?

A. The O. R. & N. and Union Pacific, yes.

E. NEWBEGIN (recalled)

testified:

Examined by Mr. COTTON:

Q. Mr. Newbegin, in testifying yesterday you did not mean to say that the Ogden gateway was closed to the Denver & Rio Grande via Huntington, did you?

A. No, I didn't say that.

Q. I did not so understand you, but just understood that the Ogden gateway was closed.

A. What I mean by that was, Mr. Cotton, that the gateway was closed for bringing cars via Sacramento.

Q. Yes, but the Ogden gateway via Huntington is still open?

673 A. Now, I don't know enough about the railroads back there: whether you come via Ogden to come to Huntington, I don't knew.

Q. Yes; you come from Ogden and come by the Short Line to Huntington in connection with the D. & R. G.

A. I am not familiar with the railroads up there and I don't want to testify about that; I know nothing about them except in a general way.

Q. Well, the D. & R. G. still interchanges business with the O. R. & N.?

A. With the O. R. & N.?

Q. Yes.

A. I don't know as to that.

Q. You don't know whether that is closed or not?

A. Not now. I do know this, that you can't ship cars via Ogden to Sacramento.

Commissioner LANE. You can?

WITNESS. You can not.

Q. But you don't know whether you can ship by the O. R. & N. and the D. & R. G. or not?

A. At this time?

Q. Yes.

A. I could not say; no.

Commissioner LANE. I didn't so understand him to testify.

Mr. COTTON. But he said the Ogden gateway was closed.

WITNESS. What I refer to as the Ogden gateway, and I think you know what I referred to, is this: that to-day you can not ship a car via Ogden via Sacramento to Portland, transcontinental freight.

Mr. COTTON. With my road I did not regard that as closing the Ogden gateway: that is, the O. R. & N.

Mr. SEVERANCE. Well, the stockholders of the Southern Pacific might.

674 Mr. COTTON. That is a different matter; that is a matter that is very easily explained—why it is closed. If your honor would like to know about that feature, it is very easily explained.

Commissioner LANE. I presume you will put on some railroad officials while we are here; is that your intention?

Mr. SEVERANCE. I intend to call Mr. Miller, and he will explain that.

Mr. LOVETT. It is not our intention to call any witness, your honor, anywhere.

Commissioner LANE. Did you intend to call them?

Mr. SEVERANCE. I intend to call Mr. Miller; he can explain that, of course.

Q. Now, Mr. Newbegin, you stated some transaction about the diversion of a car or cars; when did that take place?

A. Well, when I left here yesterday, when the court excused me, I was the happiest man in the room; I thought I had something easy, and I went over to the office and got two young men to help me, and we started in to find records. Well, like anything that you never expect to use again, when that thing transpired I never had any idea that I would be called to testify on it any more than a man expects his daily transactions of to-day to be put on the witness stand five or six years from now, and I could not find anything positive. The only thing I could find was this: that in 1902, the fall of 1902—I think it was September and October—we had two cars by Ogden via the Rio Grande into Portland by the Southern.

Q. Sacramento?

675 A. Yes; Sacramento; and that leads me to believe—now, I would not want to swear positively, because if any of you gentlemen would go back five or six years it would be very hard to place those things—that the diversion of the cars happened in the winter of 1902-3; that is to say, that we ordered the goods in November or December, and they were shipped after the first of 1903, and were diverted and came into Portland over the O. R. & N., when our intention was that they should come by the Southern Pacific.

Q. The reason given you was that the Sacramento-Ogden gateway was closed, there were no longer any rates.

A. We had been shipping largely Southern Pacific, and, as I recall it now, after picking up a piece here and there yesterday, I got after the Southern Pacific for diverting cars before that, and they made an exception in my case, and I think that is the reason why these two or three cars came in in September; and on the strength of these cars coming in in September we gave them some freight to come Southern, and that came, I think, over the O. R. & N. in 1903.

Q. Now you can ship by the D. & R. G. and the O. R. & N. or any other line—the Northern Pacific or Great Northern—down into the Willamette Valley, can't you?

A. How is that now, Mr. Cotton?

Q. I say you can ship from the east via the D. & R. G. at Huntington or the Northern Pacific and Portland or the Great Northern and Portland down into the Willamette Valley to Southern Pacific points, can't you, to-day?

A. Well, I will say that shipments as a rule via the Great Northern and the Northern Pacific to the Willamette Valley are
676 not satisfactory.

Q. What is the trouble?

A. You will have to ask somebody that knows more about it than I.

Q. Well, where does the trouble occur?

A. Well, they usually try to transfer it to a boat or something of that kind. Anyhow, they happen to make it uncomfortable for you—so uncomfortable we always route ours Union Pacific so as to have no trouble.

Q. Who makes it uncomfortable?

A. I would not like to say, because I don't know.

Q. Don't the Northern Pacific control their own traffic out of here? If they don't want to send it by rail and prefer to send it by boat, that is their business, isn't it?

A. Well, I don't know; they might think they control it, but there might be conditions which they have no control over.

Q. Well, if the route is open by rail, who transfers? Do you suppose the Southern Pacific goes to an N. P. car and puts it on a rival boat line?

A. That would be a matter, I should think, the railroad men could speak of better than I.

Q. Well, now, could you imagine that——

Mr. Severance. Well, now, I don't suppose we want a mere speculation, your honor?

Mr. Cotton. Well, he is speculating the other way, as if we were interfering with it.

Commissioner Lane. I will let him answer.

A. I will say this: In making our shipments in the Willamette Valley we find it to our advantage to ship by the Union Pacific in preference to the Northern, anyway.

677 Q. Why?

A. Because with them we get better service.

Q. Where does that bad service occur, from Portland into the Valley by way of boat, or from Portland into the Valley by way of rail?

A. Well, that is hard to say. We might say that the objection to transferring goods from rail to boat might have something to do with it; we might say, Mr. Cotton, that the objection in regard to claims might have something to do with it,—that is for damages.

Q. Yes; claims against whom, the Southern Pacific?

A. Either the Southern Pacific or the Great Northern. For instance if we have a claim against the U. P. or the O. R. & N. it is easier to get it fixed up than it is the Southern Pacific or the Great Northern.

Q. I see. Recently you have been shipping over the Union Pacific?

A. Yes; largely with them.

Q. Is that a matter of your preference or compulsion?

A. Well, I judge it is our preference; we usually pay the freight.

Q. You don't know of any limitation upon your ability to ship other than by the Sacramento route, do you?

A. No.

Q. And therefore your shipments this way are just a matter of your own convenience and because you think you get better service that way?

A. Yes.

Q. That is all, sir.

Examined by Mr. SEVERANCE:

Q. Mr. Newbegin, prior to the time that the Oregon Railroad & Navigation and Southern Pacific interests were together, I be-
678 lieve you testified yesterday that the bulk of your business came via Sacramento?

A. Well, I think so.

Q. Yes.

A. I think so.

Q. And at about the time you speak of, 1902 or 1903 you were unable to ship at all to Sacramento, but the shipments had to come via the O. R. & N.?

A. Well, I think the railroads could fix the date very easily, because they know just as well as I do—no, they know a great deal better than I do just when Mr. Harriman, or whoever had charge of that, ordered that gateway closed.

Q. Well, but it is a fact you can't ship that way now?

A. It is a fact you cannot ship a car from the east; that is, unless it has been changed recently; to my knowledge you can't ship a car via Ogden via Sacramento to Portland.

Q. That is what I thought. Now you say—Mr. Cotton asked you if it was not a matter of preference with you to ship by the Union Pacific; that preference arises out of the fact that it is more comfortable for you, and you get better service than if you attempt to ship over some other line; isn't that it?

A. Just at this time the Union Pacific route is open and the Great Northern is closed, and we naturally ship the Union Pacific.

Q. Certainly; but so far as shipments up into the Willamette Valley are concerned, when you ship over some line other than the O. R. & N., do your cars go through?

A. Yes; certainly they go through. If we ship Northern Pacific or Great Northern they will go through as far as Albany and Salem, because there are boat connections; you can transfer to boat from here. For instance, if a car came over the Great Northern you can transfer it to the boat.

Q. That is not what I am speaking of; do the cars them-
679 selves come through, or do they have to transfer to boat here at Portland?

A. Now, Mr. Severance, I would not say but my understanding is most of the shipments are transferred to boats here. I don't know

positively, I don't want to swear to these things, because I am not posted.

Q. That is, transferred to boats——

A. I will say this: we usually ship our cars now for the Willamette Valley by the Union Pacific, Oregon Short Line, and O. R. & N., care of the Southern Pacific, because we think we get better service.

Q. That is, the cars go right through all rail?

A. Yes; all rail.

Q. There is no transfer to boat?

A. Not if they come Union Pacific and Oregon Short Line.

Q. That is what I mean if they come Union Pacific; that is all, I guess.

Examined by Mr. COTTON:

Q. When they are transferred here to a boat, to whose boat are they transferred?

A. Well, I guess that does not matter much, because it is just the same whether it is Mr. Graham's boats or yours?

Q. Well, going up into the country above Salem it is Mr. Graham's boat, isn't it?

A. Well, I would not say. I don't know; but it does not make any difference, the rates are the same, and as I understand it you have a working agreement; I don't know it, but that is what I have been told, it is generally reported.

Q. But if your car goes to Albany it don't go by boat, does
680 it—the Northern Pacific car?

A. Some times of the year it could go by boat.

Q. I mean don't they actually; or have you made any shipments that way?

A. As I stated awhile ago we usually ship by your lines, Mr. Cotton, because we think——

Q. How long ago, Mr. Newbegin, did you make shipment by the Northern Pacific to Albany?

A. I could not say.

Mr. SEVERANCE. Have you any recollection of how long ago it was?

WITNESS. The last recollection I have very vividly was we had a claim against the Great Northern amounting to about $35, and we had so much trouble getting that claim—it was a just claim, and in getting it adjusted we always felt that you folks, I don't say that you did, I can't swear that you did, I can't say, but we always felt, that is, I felt as manager for our firm that you folks didn't get after the Great Northern as much as you should to pay their part, in order to let us feel that your line was the way to ship the freight, and we had such a time getting that claim we said in the future we would ship the way that we would have no interference.

Q. Do you know where the loss occurred?

A. You could not tell whether the freight was damaged between here and Salem, or between Council Bluffs and Huntington, could you?

Q. No. It was not between Council Bluffs and Huntington when it came in on the Northern.

A. You could not tell whether it was between Portland and Salem; it was damaged in the car; you could not tell where it was damaged.

681 Q. Possibly the railroads might have had some record as to rough handling, or something of that sort?

A. That I don't know; I don't know where it was damaged.

Q. Do you remember the number of your claim?

A. No.

Q. Have you any papers that would indicate this claim of $35?

A. Excuse me; don't ask me to look up any more papers five or six years old.

Q. How old is it? Possibly we have a system and we could find it in our office.

A. I think it would be five or six years, Mr. Cotton.

Q. Because of that claim and the difficulty you had in getting it paid you stopped shipping by the Northern lines substantially?

A. Well, I don't know; I would not want to swear it was because of that claim alone, Mr. Cotton.

Q. I mean because of that and other little difficulties.

A. Yes, I mean to say this: We thought it was policy and we would get better service all around to ship that way.

Q. Do you ship any stuff in and out of Portland over the Northern Pacific?

A. In and out of Portland?

Q. Yes.

A. How do you mean; do you mean on the northern lines?

Q. Yes.

A. Why, I think so.

Q. Well, I mean through stuff from the east; do you have through stuff from the east coming in here over the northern lines to Portland?

A. Sometimes.

Q. Well, I mean now——

A. Yes, I think we have got three or four cars on the northern line now that we wish were on your line, too, just now, because we would get a little better service.

682 Q. The bulk of your business, however, comes in over the Union Pacific to Portland?

A. Yes, sir.

Mr. SEVERANCE. The blockade on the Northern Pacific is occasioned by the snow blockade now, isn't it?

WITNESS. We don't have quite as much trouble on the Northern Pacific as there is on the Great Northern, but it is the snow blockade, I understand; I don't know.

683 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by T. D. Honeyman, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the City of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Honeyman were on the stand giving the same testimony.

Mr. EVARTS. Yes.

T. D. HONEYMAN

testified.

Examined by Mr. SEVERANCE:

Q. Where do you live?

A. Portland.

Q. And what is your business?

A. Wholesale and retail hardware.

Q. How long have you been in business, Mr. Honeyman?

A. About thirty years.

Q. Twenty years here in Portland?

A. Thirty years; yes, sir.

Q. In the same line of business?

A. Yes, sir.

Q. From what points, Mr. Honeyman, do you import into Portland your stock that you handle?

A. Our goods originate in all the manufacturing centers in this country.

Q. That means the Atlantic seaboard and the interior states?

A. Yes, sir.

Q. You remember of hearing several years ago of the acquisition of the stock of the Southern Pacific road by the Union Pacific, do you not, Mr. Honeyman?

684 A. I remember when the matter became public, yes.

Q. Prior to that time will you state whether there was any competition here at Portland between the soliciting agents of the Oregon Railroad & Navigation Company and the Southern Pacific as well as the Northern Pacific on shipments from the east?

A. Yes, there was competition.

Q. That was rather active at that time, Mr. Honeyman?

A. Yes.

Q. And over what lines did you ship your goods coming into Portland in those days?

A. Over all the transcontinental lines, the Southern Pacific, O. R. & N., Northern, and the Great Northern.

Q. By the Southern Pacific do you mean both the Sunset route around by boat and rail by the south, and also the Sacramento route?

A. The Sunset route by boat and rail to the south?

Q. Yes.

A. We shipped some goods via Sacramento.

Q. Yes; and also shipped over the Union Pacific, the Short Line and the O. R. & N.?

A. Yes.

Q. And the Northern road?

A. Yes, sir.

Q. Now at the present time, Mr. Honeyman, are you solicited for shipments via the Sunset route?

A. The details of solicitation, or the details of shipments I have turned over to employes.

Q. To Mr. Hall?

A. Yes.

Q. And you don't meet the solicitors at all yourself now?

A. No, sir.

Q. Now in those days was there also another method of shipment by way of Panama, thence by boats of the Oregon Railroad & Navigation Co.?

A. Yes, that still exists.

Q. That still exists, and you ship that way at times?

685 A. Yes, we move large quantities that way.

Q. And were there soliciting agents working that line, too, who called on you?

A. No.

Q. That was routed east?

A. It was a rate, or the route was of common knowledge on account of the rates being much less than the railroads, and it didn't need solicitation.

Q. Yes. Now were there also lines of boats coming around Cape Horn up to San Francisco and thence transshipped here via the O. R. & N.?

A. Yes.

Q. And still are?

A. Yes.

Q. And did you ship by that route at times?

A. Yes; great quantities.

Examined by Mr. CORTON:

Q. Mr. Honeyman, how many lines of transportation are there competing here at the present time for your business—that is, over which you can ship? You have mentioned two water lines, have you not?

A. We have the American Hawaiian line and the Panama line.

Q. And the Northern Pacific?

A. The Northern Pacific.

Q. Great Northern?

A. Great Northern.

Q. Union Pacific?

A. Union Pacific.

Q. And Southern Pacific Sunset?

A. And I presume the Southern Pacific Sunset is still in existence.

Q. You don't know where you get your goods from, do you? That is, do you ship from the Atlantic seaboard at all?

A. Sunset from the Atlantic seaboard?

Q. Yes.

A. We do not, Mr. Cotton. The rate—the Sunset being the same as the northern lines, it is not to our advantage to ship Sunset; it is a long, circuitous route.

686 Q. Then the goods you ship from the Atlantic seaboard which might be in competition with the Sunset you usually bring in here by ocean, do you not?

A. Yes.

Q. By the Panama line or the American Hawaiian line.

A. Yes.

Q. Are your shipments by the Panama line and the American Hawaiian line large or small?

A. They are large.

Q. You are quite heavy ocean shippers, are you not?

A. Yes.

Q. Comparatively?

A. Yes.

Q. Have you any objection to telling, relatively, what proportion of your goods are received by ocean and what proportion by rail in this city?

A. I would be unable to tell that.

Q. From the Atlantic seaboard?

A. I would be unable to tell that without referring to our figures, but the tonnage is a considerable item. Every pound that we can move that way we do.

Q. You move everything by sea you can from the Atlantic seaboard? Therefore you are not interested in the Sunset route as such?

A. No.

Q. Now from the railroad country in the interior—Missouri, Chicago—do you ship from Missouri, or only from Chicago?

A. From Chicago and points east. Very little this side of Chicago.

Q. Very little this side of Chicago?

A. Yes; very little this side of Chicago.

Q. Now, from that section of the country what competing lines are there?

A. The solicitation competition from that territory has always been done by the Middle-West lines, with the Missouri
687 River lines.

Q. About how many of the Missouri River lines are soliciting your business from Chicago points here at the present time?

A. Well, from the number of solicitors that come into the store, I think that all the lines are represented, which would include the Burlington, the Great Northern, the Milwaukee——

Q. Rock Island?

A. Rock Island.

Q. Northwestern?

A. I think the Northwestern; yes.

Q. Illinois Central?

A. Illinois Central.

Q. And all the so-called Iowa roads are working for your business at the present time?

A. Yes.

Q. And they are routed either over the—are the Rio Grande soliciting business too?

A. I don't know, Mr. Cotton.

Q. These Iowa roads route their business into this city either over the Northern Pacific, or the Great Northern, or the Union; isn't that right?

A. Yes.

Q. You ship all three ways?

A. Yes.

Q. The Great Northern reaches this city by what route?

A. Over the O. R. & N.

Q. It comes in over the O. R. & N. from Spokane?

A. From Spokane; yes.

Q. You do much shipping that way?

A. Yes, we have given them quite a little business.

Q. And all of these roads have their soliciters, and they are all visiting you?

A. Yes.

Q. And as far as your business is concerned you have many ways of shipping besides the Harriman line, haven't you?

A. We have plenty ways to get goods in here.

688 Commissioner LANE. Do you route your own business, or do you leave that to the consignor?

WITNESS. We route our own business with the exception of possibly some stuff that is controlled by some of the larger corporations who insist on making their own deliveries, referring to the U. S. Steel Co., for instance.

Commissioner LANE. You route your own business with the exception of some of the large corporations, such as the U. S. Steel Co., who insist on the right to route their own business?

WITNESS. Yes.

Commissioner LANE. That is all, Mr. Honeyman.

Examined by Mr. SEVERANCE:

Q. Just one moment, Mr. Honeyman. In the old days, when you were shipping as you said somewhat by the Sunset, and by the——

Mr. COTTON. I don't understand that the witness said he ever shipped by the Sunset.

Mr. SEVERANCE. He said he did.

WITNESS. Yes, we shipped by the Sunset.

Mr. COTTON. In the old days?

WITNESS. Yes.

Mr. SEVERANCE. That is what he said; I remember that brought out the question whether the Sunset was still in existence.

WITNESS. We ship by the Sunset when it is to our advantage; owing to conditions.

Q. I was going to ask you if in the old days the Sunset route and Southern Pacific into Portland did not compete by way of reducing rates as against the Union Pacific and its connections?

689 A. The Sunset route used to make low rates into San Francisco, forced by steamer conditions to that point, and we used to take advantage of them by adding the steamer or rail local from San Francisco here, which made a lower combination.

Q. The soliciting agents of the Sunset and these other lines in the old days, and of the Sacramento route, all of them used to compete at times by way of reducing rates, didn't they, so you could get a better route by one line than by the other.

A. The published tariffs that were in effect to San Francisco made it to our advantage to ship——

Q. I understand that, but there were sometimes when shipments made to Portland—and I don't mean recently, but years ago—when these competitive differences existed much less than published rates, were they not?

A. We never had any offers from the Southern Pacific officials better than——

Q. Better than the published rates?

A. Yes.

Q. But that difference in the rates that you have spoken of existed and enabled you to——

A. Yes; combination of rates.

Q. Yes; bettered you to ship that way?

A. Yes.

Mr. COTTON. There was a time, Mr. Honeyman, in the old days to which Mr. Severance refers, practically every transcontinental shipment coming in here, except on a few of the lines, came in at a rate less than tariff, isn't that so?

WITNESS. Yes.

Mr. COTTON. And are you referring to those old days when you are talking to Mr. Severance?

WITNESS. I was referring to those days; yes.

690 Mr. COTTON. But you say you did not receive any offer of a cut rate in those old days from the Southern Pacific?

WITNESS. I never had an offer from the Southern Pacific.

Q. But you did from the O. R. & N., as competing with the Southern Pacific and the Sunset Route?

A. Well——

Q. To the best of your recollection?

A. Would I be compelled to answer a matter?

Q. You have already answered everything moved in here on low rates. I don't care whether you answer it, if you don't want to.

Mr. COTTON. I would just as soon have him answer, so far as I am concerned.

Commissioner LANE. There was a time when that was universal.

Mr. SEVERANCE. Yes; that was universal.

Commissioner LANE. I don't understand the witness to testify, however, that it was because of competition in rebates between the two lines that he shipped over the Southern Pacific.

Q. Let me ask the question in this way, Mr. Honeyman: When that combination existed which gave you a low rate over the Southern Pacific and Sunset Route, didn't the Oregon Railroad & Navigation Company at its eastern connection with the Union Pacific meet that by a cut in the published rate in order to get business?

A. No; the rates were established from the Atlantic to the California points to meet water competition.

Q. I understand that.

A. And existed for a long time before the Northern lines followed suit. Ultimately they were forced to it and published the same rates. When they did that the business began to move north.

Q. You stated in answer to Mr. Cotton a moment ago there was a time when nearly everything moved in there at less than a
691 published tariff.

A. Yes.

Q. Now, that was a time when these roads were all competing for business, wasn't it?

A. But it did not necessarily apply between the O. R. & N. and the Sunset route.

Q. Oh, I don't mean simply between them, but all the lines were competing for the business and were cutting the rates.

A. Yes.

Q. At that time, weren't they?

A. Yes.

Q. Trying to get the business as against the Sunset, and as against the O. R. & N., and as against the Northern Pacific, and all of them, each one trying to get the business?

A. Yes; cutting the rates below the tariff.

Q. To get the business?

A. Yes; that was all stopped by the interstate commerce law.

Q. Yes; that is all.

692 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by O. O. Hall, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Hall were on the stand giving the same testimony?

Mr. EVARTS. Yes.

O. O. HALL.

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Hall, where do you live?

A. Portland.

Q. What is your business?

A. Employed with the Honeyman Hardware Co.

Q. In what capacity do you work for them, sir?

A. I look after their freight shipments.

Q. How long have you been with them?

A. A little over four years.

Q. Before that time what was your business?

A. I was employed with the O. R. & N. Company.

Q. Are you called on at your office, Mr. Hall, by gentlemen soliciting freight?

A. I am; yes, sir.

Q. Quite frequently?

A. Not so much as I was in the past. I shut them off a little.

Q. But they have been around?

A. Oh, yes; they come around.

693 Q. Now, when the contracting freight agents of the Harriman lines, so-called—as that expression was used by Mr. Cotton a few minutes ago, I will assume to use it—when those gentlemen come around to see you do they solicit freight for the Sunset route or the Sacramento route, or simply for the Harriman line?

A. They solicit for the Harriman lines; they don't mention which routing.

Q. Now, you ship a good deal of your stuff over the O. R. & N., don't you?

A. Yes, sir.

Q. And how does that come out from the east; take it from the Atlantic seaboard territory.

A. Well, by the various lines; that means all of them; and by all of them, I mean the majority of them; there might be some that we don't use.

Q. Well, Mr. Hall, take the shipments to—I suppose you make shipments by the lakes, don't you, having heavy stuff to ship?

A. Yes, sir.

Q. To what ports on the lake does your stuff go?

A. You mean the western port?

Q. To what upper lake ports do you ship from the east?

A. West Superior, Duluth, Chicago, Milwaukee.

Q. And from thence how does your stuff move?

A. From the Northern ports it would move Great Northern and Northern Pacific; from the Chicago and Milwaukee ports it would move by some of the Iowa lines.

Q. To Omaha?
A. To Omaha.
Q. Do you sometimes also move stuff Duluth to Omaha by the C. St. P. M. & O?
A. Yes, frequently.
Q. You are solicited to ship by the Northern Pacific, are you not; their solicitor calls on you, doesn't he?
A. Yes, sir.
Q. And the Great Northern?
A. Yes, sir.
694 Q. The Canadian Pacific; or don't they come in?
A. No, sir.

Examined by Mr. COTTON:

Q. Mr. Hall, you are solicited now by the freight agents of all the Iowa roads, are you not?
A. With the possible exception of one or two, yes, sir.
Q. And they ship over the Union Pacific, also over the Northern Pacific, don't they too?
A. If we route it that way, yes, sir.
Q. And there has been no limitation on the manner in which you can route your freight?
A. None whatever.
Q. What?
A. None whatever on the freight that we control.
Q. You route your freight in here anyway that you want to?
A. Yes, sir.
Q. Now, when your stuff comes over the lakes and comes out here by way of the Great Northern, how does it reach Portland from Spokane?
A. By the O. R. & N.
Q. On the O. R. & N. line? If it comes out by one of the Iowa lines that delivers it at Omaha, it comes in here by way of Huntington?
A. Yes.
Q. The Northern Pacific is actively engaged in business here and brings some stuff for you, doesn't it?
A. Yes, sir.

By Mr. SEVERANCE:

Q. And there has been no limitation on any route you know of to your knowledge over which you can send your goods.
A. None whatever, to my knowledge.
Q. In the case of the Harriman lines you say they merely
695 solicit business for the Harriman line; they route it all by way of the Oregon Railroad & Navigation in here, do they not?
A. They don't route any of it; I route the freight.
Q. Well, you bring it in that way; it does not come by Sacramento, does it?
A. It does not come by Sacramento, no, sir.

Q. And you are not solicited by anybody representing the Harriman lines to allow it to come that way, are you?

A. We are not requested to let it come that way.

Q. No, sir; nor are you requested to let it come by the Sunset route, are you?

A. Yes, sir.

Mr. COTTON. You can ship Sacramento or Sunset if you want to, can't you?

WITNESS. Now, I don't know whether the rates apply to Portland; I think they do; I have a copy of the tariff, but I don't keep up on it.

Q. You do your own routing, do you?

A. Yes, sir.

696 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by J. K. Gill, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Gill were on the stand giving the same testimony.

Mr. EVARTS. Yes.

J. K. GILL

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live, Mr. Gill?

A. Portland.

Q. How long have you lived here?

A. About 35 years.

Q. What is your business?

A. Wholesale and retail stationery and books.

Q. You have the principal store of that kind in Portland, do you not?

A. Yes; we carry a large line of stock.

Q. Mr. Gill, you remember prior to the time in common talk that the Southern Pacific and Union Pacific united, or the stock of one was owned by the other, which way your goods were routed out here from the east?

A. Why, they were routed a variety of ways. We have always shipped some goods by water and some by rail.

Q. Some by water and some by rail?

A. Yes.

Q. And over what lines of rail did you ship in those days?

A. Generally by the Union Pacific and the O. R. & N., and sometimes by the—well, we used all the lines, but mainly the O. R. & N. and Northern Pacific.

And were you in those days solicited for shipments by the

697 Q. Southern Pacific and did you sometimes ship that way?

A. Yes; we sometimes shipped that way, but not frequently.

Q. No; not frequently. The most of your goods came over the other roads?

A. More direct; yes, sir.

Q. But in those days you were called upon and solicited for shipments that way, were you not?

A. Yes; we were occasionally.

Q. And did your shipments that way come both by the Sunset route and by Sacramento in response to those solicitations?

A. Usually by the Sunset, by the American water lines.

Q. The Morgan Line of boats and the rails?

A. Yes; we used that route mostly in those days, when we came by the Southern route.

Q. Now, at the present time are you solicited for shipments via that route by any representative?

A. Not to my knowledge. I don't meet as many of the solicitors; one of our men handles the freight; but I think we are seldom solicited to ship that way, if at all.

Q. You don't know that you are solicited to ship that way at all, do you, Mr. Gill?

A. I don't know; my impression is we are not.

Q. Who is the gentleman in your store who is met by these solicitors?

A. Mr. Montgomery, manager of our wholesale department, would see more than I would, or the young man that handles the freight.

Q. You are still solicited for shipments by the other lines at times?

A. Why, by the lines of the middle west, the lines east of Omaha; we have solicitations from them frequently.

698 Q. And for the Northern Pacific and Great Northern?

A. Not so much from them; occasionally from the Northern Pacific and the Great Northern; not often.

Examined by Mr. COTTON:

Q. You have always comparatively been a heavy ocean shipper, have you not, Mr. Gill?

A. Yes; that is true.

Q. By the Panama route until the American Hawaiian line recently giving better service.

A. Yes; formerly by the sailing vessels and later by the Panama lines.

Q. Are you still an ocean shipper?

A. Yes.

Q. Your Atlantic seaboard stuff comes in largely by ocean, doesn't it?

A. The heavy lines do; yes.

Q. And the other lines come what way?

A. Why, most of our stock originates in New England and New York points, and if it does not come by water it comes mainly by the Union Pacific and the O. R. & N.

Q. And your manner of shipment has not changed now from what it was, but it has practically gone along in the same way, hasn't it?

A. Why, I won't say, except we might perhaps—I think we do ship a larger proportion of rail stock by the O. R. & N. than we formerly did.

Q. But that has not been a diversion from the Sunset route of the Southern Pacific particularly?

A. No, not at all.

Q. The Sunset route and Southern Pacific are still open to you if you wish to ship that way, are they not?

A. Yes; we could ship that way.

699 Q. You don't know of any limitation upon your routing or manner of shipment?

A. No, I do not.

Q. That is all, sir.

By Mr. SEVERANCE:

Q. Mr. Gill, I think you stated in answer to my question that you did at times ship by the Sunset in the old days and by Sacramento?

A. I did, yes.

Q. And you do not do so now?

A. No, I am not aware that we route any; occasionally a shipment may go that way that is routed by the shipper who pays the freight and has the right to route it.

Q. But when you route it yourself?

A. Oh, no.

Q. But in the old days you did?

A Yes.

Q. Owing to the solicitation of the agents?

A. That had something to do with it, no doubt, but usually the rate would affect it.

Commissioner LANE. What other reason?

WITNESS. There might be a personal reason that might lead us to give a man a carload or shipment over his route when there was no other particular reason for doing it. We might be interested in that man and say Yes, we will give you this shipment; that is the only reason to which I referred.

Commissioner LANE. Any difference in time?

WITNESS. Yes; it would take a little longer that way than by the all-rail routes.

Commissioner LANE. So it would be an act of personal preference to give it to the Sunset route?

WITNESS. Yes; it would be some personal consideration or

700 something like that; friendship perhaps; that would be all there would be in it.

Q. Well, sometimes I suppose owing to congested conditions by the all-rail routes, the time made would be fully as short or shorter by the Sunset; isn't that so?

A. Well, that is true; that might happen, but that is an incident we never can foresee. We never route anything in any special way to avoid congestion, because the congestion does not arise until after the——

Q. After the stuff is started?
A. Yes; and we don't know of it until afterwards.
Q. That is all, Mr. Gill.
Mr. COTTON. You don't know how the distance compares from New Orleans to Portland as compared with the distance from New York to Portland, do you; you don't happen to remember?
WITNESS. I don't know in miles; I have been over it a great many times; of course it is very much longer by the southern route.

701 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by W. A. Montgomery, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Montgomery were on the stand giving the same testimony.
Mr. EVARTS. Yes.

W. A. MONTGOMERY

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live, Mr. Montgomery?
A. In Portland.
Q. What is your business?
A. I am in the stationery business.
Q. You are in the company with Mr. Gill, are you not?
A. Yes, sir.
Q. Mr. Gill just stated on the stand, Mr. Montgomery, that you meet the freight solicitors more than he does these days?
A. That has been true during the last four or five years; yes.
Q. Now, Mr. Montgomery, are you at the present time solicited by agents of the Southern Pacific road for shipments by the Southern Pacific?
A. No, sir.
Q. You say you are not?
A. No.
Q. And your goods chiefly come out by the O. R. & N., do they not?
A. Yes.
Q. And the Union Pacific?
A. Yes, sir.
702 Q. You ship some over the Northern Pacific?
A. Yes, some.
Q. And some over the Great Northern?
A. We have occasionally, but not as much as the Northern Pacific.
Q. And also by water?
A. Yes, largely by water.
Q. Largely by water; and to what points—by what lines do you ship by water?

A. By the American Hawaiian nearly altogether.

Q. That line comes from New York around the Horn or through the Straits to San Francisco, doesn't it?

A. Yes.

Q. Then how do you bring your stuff up from San Francisco?

A. Well, the rate we have on that is taken by the American Hawaiian. It nearly all comes by the O. R. & N. or by the line of boats down there, but I don't know anything about it; it may come by several different lines so far as we know, because the rate is given us from New York.

Q. The American Hawaiian gives you a net rate into Portland?

A. Yes, they make us a rate.

Q. And it comes up by some boat, does it?

A. Yes.

Q. In no case by rail from San Francisco?

A. I don't recall any case when it has come by rail.

Q. Do you buy any goods in California?

A. Very few.

Q. What class of goods, if any, do you buy in California?

A. It would be merely shorts of lines that we handle from the east; that would be all; in our lines of books and stationery.

Q. And how do they come up from San Francisco?

A. Sometimes by boat and sometimes by rail.

Q. Sometimes by the O. R. & N. boats and sometimes by rail. That is all.

703 Examined by Mr. COTTON:

Q. Mr. Montgomery, the stuff that comes here from the east via the Great Northern reaches Portland over what route from Spokane?

A. Over the O. R. & N.

Q. It comes in over the O. R. & N. Now you say you ship largely by water at the present time in the American Hawaiian line?

A. Yes.

Q. That is at less rates than the rail rates, isn't it?

A. Yes, sir.

Q. And that is the cause of your making your shipments that way?

A. Yes, sir.

Q. Are their rates stable, or are they being cut from time to time in order to make cargoes?

A. The rates have been stable so far as I know.

Q. You make your engagements in advance, do you, now?

A. Yes.

Q. And therefore you have to contract for space and agree to pay a current rate?

A. Yes.

Q. Now when the stuff comes in by the American Hawaiian line at lesser rates than the rail rates, it reaches San Francisco and comes to Portland in what way?

A. We have received it nearly altogether by boat.

Q. And those boats are boats belonging to the O. R. & N. Co.?

A. Yes.

Q. Yes. And therefore the O. R. & N. steamboat lines are the connection between Portland and San Francisco of the American Hawaiian lines?

A. Yes, sir.

Q. Operating in opposition to all of the railroads in the
704 country?

A. Yes, sir.

Q. And they are in direct and intense opposition, aren't they?

A. Well, so far as we are concerned, it would be because of their rates.

Q. They get your business most of the time?

A. Yes, sir; heavy goods, I mean.

Commissioner LANE. Is the rate you pay a through rate from the east to Portland, or is it the rate to San Francisco and you pay the local?

WITNESS. No, it is a rate through to Portland.

Commissioner LANE. Who pays the rate over the O. R. & N. steamship from San Francisco up?

WITNESS. The American Hawaiian line.

Commissioner LANE. Do you know what that rate is?

WITNESS. I do not, no.

Q. Now, on your San Francisco stuff, some of it you say comes by rail and some by the O. R. & N. boats?

A. I should have said altogether by boat. I referred to, I think I referred to one or two instances where it came by rail in case of some long delay perhaps, where the agents of the American Hawaiian had brought it that way; that had nothing to do with us, except I recall the case; but it would not form the rule.

Q. I mean your short orders.

A. Oh, our short orders; I thought you meant the American Hawaiian shipments.

Q. No, no.

A. Short orders we can take the boat or rail, which ever we choose.

705 Q. You say you are not separately solicited, or no Southern Pacific solicitor solicits you; what do you mean by that?

A. Not that I know of; I don't know that any solicitor has come to us representing himself to be for the Southern Pacific.

Q. Alone?

A. Alone.

Q. Are you solicited by many railroad men now for your business?

A. I don't know that we are solicited by as many as formerly. We use the O. R. & N. in our business, because of the time concerned largely.

Q. You would prefer the O. R. & N. line so far as the rail, rather than shipping around by the Sunset or Sacramento, wouldn't you?

A. Well, we would almost have to use it.

Q. You would not route that way if they insisted on it, would you?

A. The Southern Pacific?

Q. Yes, Sacramento.

A. No, we would not.

Q. There is a substantial difference in time and always has been, hasn't there?

A. Yes, I think on the average there has been.

Q. Do you know of any limitation upon your routing or the manner in which you can route goods in this country by reason of any railroad restrictions of any kind?

A. I do not.

Q. You are free to ship any way that you want to, aren't you?

A. At least during the time that I have been acquainted with the road.

Q. That has been how many years?

A. Oh, that has been practically since 1901; I knew about the route before, but Mr. Gill received more of that previous to that.

Q. But ever since that time you have known of no limitation
706 of your routing goods in this city in any way whatsoever?

A. No.

Q. That is all.

Mr. SEVERANCE. Whatever might be your action in case you were solicited to ship by the Sacramento route, you don't get any such request now, do you?

WITNESS. No.

Mr. SEVERANCE. That is all.

707 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by Edward Ehrman, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Ehrman were on the stand giving the same testimony.

Mr. EVARTS. Yes.

EDWARD EHRMAN

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live, Mr. Ehrman?

A. Portland.

Q. How long have you lived here?

A. Twenty years.

Q. What is your business?

A. Wholesale grocer.

Q. Have you been in that business all the time you have been living here?

A. Yes.

Q. From what points do you procure the goods that you sell?

A. From what points?

Q. Yes, from what points do you procure the goods you sell? From where do you ship them?

A. Where do we ship them?

Q. From where do you ship goods to your store?

A. From all points east.

Q. Atlantic seaboard and the middle states.

A. The Atlantic seaboard, west, and south.

Q. And has that been the case during all the time you have been in the business?

A. Yes.

Q. Prior to the time the Southern Pacific and the Union Pacific came under the same management, were you called on by solicitors of the Southern Pacific and of the O. R. & N. both?

708 A. Yes, sir.

Q. And did they ask for your business?

A. Yes, sir.

Q. One against the other?

A. Yes.

Q. Is there now any solicitation for business by one of these lines against the other?

A. No, sir.

Q. What lines do you ship over, Mr. Ehrman?

A. We use all the lines, the Union, Southern, Great Northern, and Northern Pacific.

Q. What goods do you get over the Southern Pacific now?

A. Well, mostly goods originating in the South.

Q. Yes, originating in Texas?

A. Texas and Louisiana.

Q. Texas or Louisiana?

A. Yes.

Q. And California; do you get goods from California?

A. We do some.

Q. Fruits, canned goods?

A. Yes.

Q. Do you bring up commodities from San Francisco to some extent?

A. To some extent, yes.

Q. And how do they come, by boat or by rail?

A. Well, they come both ways.

Q. And has that always been the case, they always came both ways?

A. Yes, sir.

Q. Now the steamship service between here and San Francisco is called now the San Francisco & Portland, being the same ships as the O. R. & N., formerly called the O. R. & N.?

A. Yes, sir.

Q. And do you ship over that line, or have you always shipped over that line more or less from San Francisco?

A. Yes, sir.

Q. And have been solicited for business over that line?

A. Yes.

Q. Are there other ships running up here from San Francisco?

709 A. Yes, sir.

Q. Any other regular line?

A. Yes; there is a regular line.

Q. What is the name of it?

A. I don't know the name of it; I don't know the name of the line.

Q. Do you know the name of the manager?

A. No, sir; I do not.

Q. Are there also independent boats, tramp boats?

A. Yes, sir.

Q. And some business is done over them?

A. Yes, sir.

Q. To what parts of the Northwest do you wholesale goods, Mr. Ehrman?

A. Well, through the States of Oregon, Washington and Idaho.

Q. Did you formerly ship goods from the east by the Sunset route?

A. To a limited extent only.

Q. And that was largely by reason of active solicitation from their agents, wasn't it?

A. Yes, sir.

Q. Now, you do not ship that way?

A. How?

Q. Do you ship that way now, except goods coming up from Louisiana and Texas?

A. We would rather not; we don't care to ship that way.

Q. No. I suppose you would not be able to tell, Mr. Ehrman, without reference to books, the number of carloads of stuff you get in here every year, could you?

A. No, sir; I could not tell you that; our freight men might; I could not.

Examined by Mr. COTTON:

Q. You can ship by the Sunset if you want to?

A. Yes, sir.

Q. But you don't want to?

A. We prefer not to; it takes longer.

710 Q. It takes longer?

A. Yes, sir.

Q. Now you spoke about a regular line of boats; did you mean a regular line in addition to the O. R. & N. steamers?

A. I think there is a regular line; they come here regularly; I think they are a regular line.

Q. Yes. Then in addition to that there are quite a number of tramp boats?

A. Yes, sir.

Q. You know of no limitation upon your routing the freight in any way whatsoever in this country, do you?

A. No; the railroads usually respect our routing that we give them.

Q. You route any way that you want to; isn't that right?

A. Yes; as far as I know.

Q. That is all.

Mr. SEVERANCE. And you are sometimes, or used to be sometimes by personal solicitation induced to route a certain way?

WITNESS. Well, that is mostly different connecting lines, the Omaha and Iowa lines.

Mr. SEVERANCE. That is, at present that is the case?

WITNESS. No; it always was that way, I believe.

Mr. SEVERANCE. Well, I asked you about the Sunset routing before. That is all.

Mr. COTTON. Now, Mr. Ehrman, when you shipped by the Sunset why did you ship that way in the good old days? Do you want to say why?

WITNESS. Well, I had no particular reason.

Mr. COTTON. Was that because of the personal solicitation of the agent, or what was it?

WITNESS. Well, perhaps it was.

711 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by Thomas McCusker, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the City of Portland, Oregon. I understand it is agree by all parties that this testimony may be written into the record and have the same force and effect as though Mr. McCusker were on the stand giving the same testimony.

Mr. EVARTS. Yes.

THOMAS McCUSKER

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live?

A. Portland.

Q. How long have you lived in Portland?

A. Eighteen years, a little over.

Q. What is your business?

A. The real estate business now.

Q. How long have you been in that business?

A. Since the 1st of December, one year ago.

Q. Prior to that time what was your business?

A. For about sixteen years with the Southern Pacific, and about a year ago, in October, I believe, I was with the Harriman lines as Assistant General Agent of the O. R. & N., the Union Pacific and Southern Pacific.

Q. What was your position with the Southern Pacific road?

A. Contracting Freight Agent.

Q. During all the time that you speak of?

A. No, a part of the time. First, I was handling claims and work in the office.

712 Q. How many years were you contracting freight agent prior to 1901?

A. I think I was contracting freight agent for the Southern Pacific for thirteen or fourteen years.

Q. Now, during that time, Mr. McCusker, what were your duties?

A. As contract freight agent they were to solicit freight for the Southern Pacific both via the Sunset Gulf line, the Sunset all rail, and the Southern Pacific via Ogden and Sacramento.

Q. Now during those days prior to 1901, did you in soliciting freight by way of Ogden work in connection with any line leaving east from Ogden other than the Union Pacific?

A. I worked with the Missouri Pacific, the Rock Island, Burlington and the Rio Grande.

Q. What road was your strongest competitor for business into Portland when you were representing the Southern Pacific alone?

A. We considered the Union Pacific and O. R. & N. the strongest competitors.

Q. What classes of goods did you solicit shipments of?

A. All classes of merchandise.

Q. And from what points?

A. All points east; the Atlantic seaboard, Chicago territory, Pittsburg territory, Missouri River territory.

Q. And in general who were the persons solicited for shipments; were they wholesale men here in Portland?

A. Wholesale men and retail men.

Q. And did you also solicit shipments out of Portland?

A. Yes, sir.

Q. To points competitive with the Oregon Railroad & Navigation Co. and Union Pacific?

A. Yes, sir.

713 Q. State what classes of commodities were shipped out of here in competition with the Southern line.

A. Hops and prunes, hides, and I don't know about the lumber shipments; that is, so far as the Union Pacific was concerned.

Q. Speak a little louder, I can't hear you.

A. I say regarding the lumber I don't believe that we solicited the lumber in those days in competition; in fact, I know we did not via Ogden; those were the principal commodities.

Q. Hops and prunes?

A. Hops, prunes, potatoes and hides, and things of that kind.

Q. Well, is the production of hops large or small in this community?

A. Large.

Q. And whereabouts?

A. Principally in the Willamette Valley. I presume 90 per cent of the growth, that is the Oregon hops grown, Oregon and Washington hops grown perhaps are within the Willamette Valley.

Q. That is a very large traffic, isn't it?

A. Yes, sir, quite a territory.

Q. How is that?

A. Quite a territory; yes, quite large; grown in Linn, Lane Counties, Marion County, Washington County, Polk County, and some in Multnomah County.

Q. How did the hops, the shipment of which you solicited, move to the east?

A. Largely Sunset; any Atlantic seaboard and European shipments went Sunset, Sunset Gulf.

Q. Was the Oregon Railroad & Navigation Company and the Short Line and Union Pacific a competitor with you for that
714 business?

A. Yes, sir.

Q. And was it your strongest competitor?

A. Yes, I considered it so.

Q. How did they get their hops into Portland from the Willamette Valley?

A. The boats of the O. R. & N. Company and of the Oregon City Transportation Company, and frequently via the Southern Pacific lines.

Q. Who would bring them into Portland?

A. The shipments that originated in the valley were solicited not only by the O. R. & N., and Union Pacific, but the Northern, Great Northern, all lines. Hops were, an average year perhaps running,—oh, from seventy-five to a hundred thousand bales.

Q. How many carloads would that make?

A. Well, it is a hard matter to tell in carloads: an average car would not exceed over 15,000, and that would be a pretty large car.

Q. Fifteen thousand pounds?

A. Yes.

Q. How many pounds in a bale?

A. From 180 to 200, I think, in that neighborhood.

Q. Now the Oregon Railroad & Navigation Company had boats on the Willamette, didn't they?

A. Yes, sir.

Q. How far up did those boats run?

A. When the water would permit, they would run to Corvallis.
Q. How far is that?
A. About ninety miles.
Q. Ninety miles from Portland?
A. Yes, sir.
Q. By rail or by boat?
A. By rail. I don't know what the river distance would be.
Q. Well, you say they went up as far as Corvallis when the
715 water would permit.
A. Yes.
Q. At times they were unable to get there.
A. Oh, yes, frequently unable to.
Q. Then how far up would they go?
A. Well, they would go to Salem, Dayton, Independence—they would go as far as they could.
Q. Well, they always went as far as Salem, didn't they?
A. Well, I could not say as to that; it is possible sometimes they would run only to Dayton.
Q. Run what?
A. To Dayton.
Q. Dayton?
A. Yes, sir.
Q. How far is Salem from here?
A. 52 miles by rail.
Q. Now, is the Willamette River in the center of this hop district?
A. Yes, I should say it was.
Q. So the hop district is tributary to boats on the river?
A. Tributary to the boats; yes, sir.
Q. And it is also tributary to the rail line of the Southern Pacific?
A. Yes, sir.
Q. And the same hops could be shipped either way?
A. Yes; that is, a good portion of it; it would have to be hauled to the river the same as it would the cars.
Q. How is that?
A. It would have to be hauled to the river the same as it would to the car.
Q. I understand; but the river line of steamers and the Southern Pacific Railroad Company tapped the same territory to a large extent?
A. Yes, sir.
Q. And that is the territory in which these hops are grown?
A. Yes.
716 Q. Now when hops moved over the O. R. & N. they were brought to Portland by the boats and then put into cars here, were they not?
A. Yes, by the boats, as I said, or rails; sometimes we brought them in, if they happened to be in our possession and routed that way.
Q. And you had soliciting agents at work in the valley and you worked there yourself?

A. No, I didn't work in the valley. The traveling freight agents and the local station agents solicit the valley business, but a great many of the shippers or dealers were located in Portland.

Q. And those shipments were solicited by you?

A. A great many of them were solicited by me, but largely by our traveling representatives.

Q. That is in the valley?

A. Yes.

Q. But I mean as far as the shipments controlled by the men here in Portland?

A. Yes.

Q. They were under your jurisdiction?

A. Yes.

Q. And the O. R. & N. had agents actively at work soliciting the same traffic?

A. Yes, sir.

Q. Now, Mr. McCusker, when those hops came into Portland by boat did they always go out all rail, or would they sometimes go by the O. R. & N. boats to San Francisco?

A. I don't think they went by boat to San Francisco; I don't remember of any going by boat.

Q. They went east by the O. R. & N. and its eastern connections?

A. The O. R. & N., the Northern or Southern.

Q. Yes. Well now, did you also route hops east by Sacramento?

A. Yes, sir.

717 Q. When you were soliciting for the Southern Pacific?

A. Yes.

Q. And from Ogden, how would they move on to the east?

A. Via the Rio Grande in connection with the Burlington, Rock Island, or Missouri Pacific, or Union Pacific.

Q. Yes, or the Union Pacific?

A. Yes.

Q. Did these lines east of Ogden, such as the Rio Grande, the Missouri Pacific and Rock Island have soliciting agents here?

A. Yes, sir.

Q. And did you work with them in securing traffic—through traffic, I mean?

A. I worked with them providing they were not soliciting against the Southern Pacific.

Q. Well, that is what I mean, when they were soliciting business?

A. I frequently had to compete with the Rio Grande or these other lines trying to solicit it by the O. R. & N.

Q. When they were working with the O. R. & N.?

A. When they were working, of course when they were working for or willing to ship via Southern Pacific, why I worked with them.

Q. Your sole duty was to get all the traffic you could over the rails of the Southern Pacific.

A. That was the point exactly.

Q. Either via Ogden or via the Sunset?

A. Yes, sir.

Q. And without reference to what road it might move over after it reached Ogden?

A. Yes.

Q. Now in a general way in soliciting business for the Southern Pacific, was there any difference made in the effort by you to
718 handle orders by reason of the point of origin of the traffic; that is, would you endeavor to throw any class of business via the Sunset and another class via Ogden, or how?

A. The Atlantic seaboard business we tried to get via the Sunset Gulf.

Q. So as to get the entire haul?

A. To get the long haul on it; that was the object, yes, sir. If we could not get it via Sunset we would take it via Ogden, of course.

Q. How did Chicago business move in those days so far as the Southern Pacific's share of it is concerned?

A. Via Ogden.

Q. Via Ogden, and Sacramento, or not?

A. Yes.

Commissioner LANE. When was that?

WITNESS. That was prior to the consolidation of the Southern Pacific with the Union Pacific.

Commissioner LANE. For how long a period prior to that?

WITNESS. Ever since my connection with the company.

Commissioner LANE. A large body of freight moved that way?

WITNESS. Considerable freight moved that way, yes, sir.

Commissioner LANE. The same rates you have via Ogden to Portland that way?

WITNESS. Yes; the same rates were in effect via Ogden as via all the other lines.

Q. And you would get that business at Ogden from what line?

A. We would get it from the Rio Grande or the Union Pacific.

Q. And the Rio Grande when it came that way would get it at Denver, I suppose, or Colorado Springs, from the Rock Island or Burlington or the Missouri Pacific?

A. Yes, sir.

Q. And sometimes you got it also from the Union Pacific, did you not?

A. Yes, sir.

719 Q. Now, were you under any instructions in those days to favor one line or the other east of Ogden in working for business?

A. No, sir.

Q. You did not care which way it moved so long as you got the haul from Ogden to Portland?

A. So long as I got the haul; I worked with all lines so long as I got the haul.

Q. And that was done with the consent of your superiors, wasn't it?

A. Oh, yes.

Q. Who was, or who were, the parties representing the Oregon Railroad & Navigation Company at Portland at that time, who occupied a position similar to yours with the Southern?

A. Mr. A. A. Morse.

Q. Mr. A. A. Morse?

A. Yes.

Q. Where is Mr. Morse now?

A. I saw him in the building here a while ago in the room.

Q. What is his business at present?

A. Well, I don't know; he is special agent of some kind for the O. R. & N. He was General Agent, he was Contracting Freight Agent, and then became General Agent, and has been succeeded by Mr. McCorquodale, and he is Special Agent of some kind; I don't know what his duties are.

Q. Of what company was Mr. Morse the General Agent?

A. The O. R. & N. and the Union Pacific.

Q. And Union Pacific?

A. Yes.

Q. He was not an officer, not an official of the Southern Pacific?

A. He was, yes, about a year ago, I believe—two years ago, rather. My connection—when I went from the Southern Pacific to the
720 O. R. & N. he became General Agent of all the lines, and I became Assistant General Agent of all the lines.

Q. That is, Mr. Morse was then your immediate superior?

A. Yes, sir.

Q. When you were representing all the Harriman lines here?

A. Yes, sir.

Q. Who is the other gentleman you spoke of, Mr. McCorquodale?

A. Yes; he is the present General Agent of the O. R. & N. and Southern Pacific lines.

Q. And was he here in the days when you were connected with the road?

A. Yes; he has had several positions; he has been in the office, and, I believe, traveling freight agent.

Q. For what road?

A. The O. R. & N., and I believe at one time he was connected with the Short Line when they were all separate, had separate solicitors.

Q. For the Oregon Short Line?

A. For the Oregon Short Line when they had separate solicitors.

Q. That is, as distinguished from the O. R. & N.?

A. Yes; and he was also at Spokane with this company, I believe.

Q. Now, at the time you were the contracting freight agent of the Southern Pacific prior to the acquisition of the Southern Pacific stock by the Union Pacific, who was your immediate superior officer?

A. Mr. E. P. Rogers, for a number of years, and Mr. C. H. Markham and Mr. R. B. Miller and Mr. W. E. Coman.

Q. Now, take them up backwards; who is Mr. Coman?

A. Mr. Coman is now assistant general freight agent of the
721 Harriman lines in Oregon.

Q. Both lines?

A. Yes.

Q. Southern and O. R. & N.?

A. Yes.

Q. And who is Mr. Miller?

A. Mr. Miller is general freight agent of these lines.

Q. And what are the other gentlemen?

A. Mr. Markham was general freight and passenger agent of the Southern Pacific lines in Oregon.

Q. Where is he now?

A. He is now in Beaumont, Texas, connected with the McGuffey Oil Company.

Q. Oh, he has left the railroad service?

A. Yes.

Q. After the two roads were working in harmony here, what position did Mr. Markham have here, if you remember?

A. After ——?

Q. After 1901, yes.

A. He left Portland and went to San Francisco, I believe, as assistant traffic manager, and from there to Texas as general manager of one of the lines; then he severed his connection with the company and is manager of the McGuffey Oil Company now.

Q. Do you know a gentleman here named Overbaugh?

A. Yes, sir.

Q. What is his first name?

A. Charles, I believe.

Q. And what is his business?

A. I believe he is now superintendent or assistant superintendent of the water lines. I saw from the papers——

Q. Well, you would simply know from the paper?

A. Yes.

Q. Was he working for the O. R. & N. or any of these companies when you were employed by them?

A. He was traveling freight agent of the O. R. & N.

722 Q. Now, Mr. McCusker, after the spring of 1901, when the two companies commenced operating together, when Mr. Stubbs took charge of the traffic of all of the lines in July, 1901, after that time was there any difference in your duties, or were you acting under any different instructions as to soliciting traffic?

A. Not immediately afterwards.

Q. When were you, if at all?

A. I can't say just when, but some little time after that we were called in a meeting with Mr. Campbell.

Q. Mr. Ben Campbell?

A. Mr. Ben Campbell, who was traffic manager, I believe, at that time here, or general freight agent of the O. R. & N. We were told

to solicit Atlantic seaboard business via Sunset; that is, certain business where the local to New York would not be too great; and other business west of there, while I was not told to actively solicit that, at the same time I was told to influence it via the Union Pacific.

Q. Well, were the same instructions given to the Oregon Railroad & Navigation Company's represenatives?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Was any reason given why it was desired that the business should be divided in this way, Mr. McCusker?

A. Well, the reason was that they wanted the most revenue for the least service, was about the way I figured it. They did not want to perform the long service for the same revenue that they would get for a short service, and they wanted the freight from the territory that would give them the best revenue for the system.

Q. And by bringing it all the way Sunset from New York
723 all the revenue came to the Southern Pacific?

A. All except the local, which they would have to absorb from the point of origin.

Q. And if it came by the Union Pacific of course they only got the routing west of Omaha.

A. Yes. In the solicitation of that business, however, if the man did not want to ship Sunset, of course we did not try to force him to ship Sunset, to jeopardize his business; they would ship it the other way; but we were told to influence it that way.

Q. That is, if you were unable to procure that business to move Sunset, then you were instructed to obtain it over or via the Union Pacific?

A. Yes, sir.

Q. And you were also instructed at that time to work the Southern Pacific Ogden route with the Union Pacific?

A. No, sir.

Q. You did not solicit business by Sacramento in other words, is that the case?

A. The Ogden gateway was closed to business for Portland via Sacramento.

Q. Via Sacramento?

A. Yes, sir.

Commissioner LANE. When was that done?

WITNESS. That, I could not say the date, but it was after the consolidation of the lines; in fact I believe the divisions don't apply that way now today via Ogden and Sacramento to Portland on any business.

Commissioner LANE. How did they close it?

WITNESS. I presume they closed it by withdrawing the rates, or the divisions rather.

Commissioner LANE. Was that done?

WITNESS. Yes. We arbitrarily diverted freight by the
724 Union Pacific.

Q. By the Union Pacific you mean——

A. By the Short Line.

Q. By the Short Line?

A. Yes.

Commissioner LANE. You mean that all the previous existing rates by way of Ogden and Sacramento were withdrawn?

WITNESS. The division was changed in some way, I don't know just what; but we had instructions not to solicit any business via Ogden.

Commissioner LANE. Who gave you those instructions?

WITNESS. They came from Mr. Campbell, Traffic Manager.

Q. That is, you say solicit by way of Ogden; you mean from Ogden here by way of Sacramento?

A. I mean when I say via Ogden, we figured that Southern Pacific via Sacramento.

Q. Yes, that is what you mean?

A. But then via Ogden was the gateway; Sacramento was not the gateway, Ogden was the gateway.

Q. Then the substance of it as I understand it, is that the instructions given to all these gentlemen that were handling this matter of soliciting business were not to solicit business by way of Ogden, Sacramento to Portland, but Ogden direct by the Short Line?

A. Yes; anything west of the Atlantic seaboard was to come Union Pacific, Short Line and O. R. & N.

Q. And not by Sacramento?

A. No, sir.

Q. Now prior to this amalgamation of interest, Mr. McCusker, was lumber shipped out of here into say the Rocky Mountain territory over the Southern Pacific?

A. I don't think so.

Q. You don't think so?

A. No.

725 Q. You don't know of lumber moving over it?

A. I don't think any lumber moved that way; not to my knowledge; I can't recall if it did.

Q. You don't remember that?

A. No.

Q. Mr. Campbell said the other day at Seattle that it did.

A. Well, I would not say that it didn't; it might have done so.

Q. What about the movement of wool from this region to the Atlantic seaboard: take the Willamette Valley wool.

A. The Willamette Valley wool we tried to ship via Sunset, Sunset Gulf, solicit it that way, and tried to,—we competed for it strongly in that way.

Q. I did not hear that. Mr. Stenographer, read that answer.

(Answer read.)

A. You understand that wool was sometimes brought to Portland to be baled here. Consequently, when it got here it might be a matter of competition for all hands.

Q. Well, did the wool in the old days prior to the amalgamation move to the east both Sunset and Ogden?

A. I could not say; I presume that it did, yes; I could not say; that is, Valley wool, I mean.

Q. Yes; that is what I am talking about, the Valley wool.

A. Yes. I could not say about Ogden, because the wool shipments were to Boston points and we tried naturally to get that via the long haul; I could not say whether it moved via Ogden or not; I presume that some of it did, but I would not swear to that.

Q. Did any live stock move from this region to the east?

726 A. Via the Southern Pacific?

Q. Yes.

A. I don't think so. I don't think they would solicit that on account of the mountain haul and the extra distance.

Q. Well, you don't remember of soliciting live stock?

A. No, I never solicited any live stock.

Q. That is what I mean.

A. No.

Q. Now, Mr. McCusker, was there any competition here in those days for passenger business between the Southern Pacific and the Oregon Railroad & Navigation?

A. Yes, sir.

Q. How was it on passenger traffic between here and San Francisco?

A. Now you understand that I was not in the passenger department.

Q. Oh, you were not in the passenger department?

A. No; I only know that there was the competition.

Q. Yes; but you were not soliciting passenger business?

A. No, I was not in the passenger business.

Q. Your work was confined to freight?

A. Yes.

Q. Now do you remember whether years ago there was any competition between the Southern Pacific and the O. R. & N. and its eastern connections in rates?

A. Yes, there was competition between all lines regarding rates.

By Commissioner LANE:

Q. Now was that condition different in 1900 from what it was in 1896 or 1897?

A. Yes, sir. The rates in recent years have been the same rate via all lines; the same tariff was applied. There was a time, but it is a number of years ago, that I hear them referring to what they call "old times," when there was a tariff to San Francisco proper.

727 Using the combination from San Francisco to Portland, it gave the Southern Pacific an advantage of ten cents a hundred.

It was a published tariff, however, and we handled considerable business both carload and less than carload on that rate.

Q. From here there.

A. From the east here; and of course vice versa on New York business. This was called the Sunset tariff, or Southern Pacific tariff, to San Francisco. Then by agreement or pressure brought by the other roads the tariffs were amended to correspond on all lines so that at the time of the consolidation there was no difference in favor of the Southern Pacific as against the others, and for some time prior to that.

Q. So that in 1901 when this consolidation took place the conditions as to the tariffs were just the same as they are to-day?

A. So far as I know, yes.

Q. How many years before 1901 had that condition existed?

A. Well, a number of years; I could not say how long, but it must have been at least five, possibly more; I don't believe that that old tariff had been in effect for ten years or possibly more than ten, when that was straightened out. I can't give you the dates; of course they have got the tariffs on file; that could be obtained.

Q. Up to that time was there considerable competition in rates between the Sunset Route and the Union Pacific for the Portland business?

A. Well, up to that time I presume there was more or less—I presume you have reference to cutting the rates?

Q. Yes.

728 A. Possibly at that time there might not have been so much cutting of rates for the reason that ten cents differential took the business to the Southern Pacific. Then in order of course to meet that the other lines had to cut the rate or meet that competition prior to the readjustment of the tariff.

Q. But they did not do that by filing a new tariff?

A. Yes, they did subsequently, but not at that time. They filed supplementals, I believe, making a tariff change; there was some change anyhow; the tariff was readjusted. The cut rates, however, were in effect after the rates were all the same when they got actively engaged in competing for business.

Q. Now did these cut rates exist up to 1901?

A. No, I don't—well, possibly they did; yes. Yes, I guess they did. There was more or less cutting of rates, I could not say just how much.

Q. That was as against the Union Pacific, the Southern Pacific would cut a rate?

A. No; as against any line; the Northern Pacific or the Great Northern; it was one road trying to get the business. It frequently happened that the line west, possibly the Union Pacific west, the Northern or the Great Northern did not cut the rate, but the trunk line or the Missouri River lines did cut the rate; but the solicitor who got that would offer the inducement over his connections.

Q. Was the Union Pacific at that time in the same position that the Great Northern was and Northern Pacific as to the cutting of rates as against the Southern?

A. They were all on a par at that time, yes, sir. Rates were the same by all lines.

Q. That is all.

729 By Mr. SEVERANCE:

Q. Is there a large amount of potatoes raised here in the Valley?

A. Yes, sir.

Q. And in the days that these lines were competitive was there active solicitation for the shipment of those potatoes?

A. The shipments of potatoes from the Valley went via Southern Pacific into Texas and Louisiana, and down in there, and I presume,—I don't know, I could not say whether they were competing for that particular business, but I presume they were; that was as a rule solicited by the outside men.

Q. By the men that were up in the Valley?

A. Yes.

Q. Now what about fruits to the east, apples?

A. We handled no fruits via Southern Pacific. Fruits coming from Southern Oregon went over other lines for the reason that they had to use refrigerator cars, and I believe the Southern Pacific's charge, or the charge via on the refrigerator cars was fifty dollars that way; it was more anyhow; it was enough to turn the business this way; and the service being a couple of days longer the shipper naturally wanted to get quick action.

Q. On fruit?

A. Yes; no fruit could be shipped of course via the Sunset.

Q. I see. Did no fruit go via Southern Pacific and Sacramento?

A. No, I don't think so, unless local. You mean east?

Q. Yes.

A. No, I don't think so; that is what I meant; I don't think it went that way.

Q. You said the Sunset.

A. I say no fruit was taken that way.

Q. I understand; but did any go via Sacramento and Ogden?

730 A. It is possible some did; I can't say.

Q. You don't know about that?

A. No. Most of it went the other way though.

Q. Now you stated what was said at a meeting by Mr. Campbell about endeavoring to throw the seaboard business obtained to the Sunset route, if that could be done; what further instructions, if any, did you have as to the effort you should make with reference to that business, if the shipper objected to sending it Sunset?

A. Our instructions were then to endeavor to get it for the Union Pacific.

Q. Well, did you after that time act under those instructions?

A. We always acted on those instructions; yes, sir.

Q. What difference or change was there in your duties after you became assistant general agent of all lines here?

A. Then I solicited for all lines, still following those instructions of getting it Sunset or via the Union Pacific.

Q. But you did not solicit for one line except to get the best haul; you did not solicit one line against the other, but you tried to get it for your lines?

A. Yes, sir; that is all.

Q. That is all, as against the other lines.

A. Against the Northern lines; in fact, the Missouri lines, or any line; we competed all the way to Omaha, of course.

Q. So that instead of the Southern Pacific standing alone here for business from the east and working indiscriminately with any other line with which it might connect and from which it could get business, it worked solely with the Union Pacific.

A. Yes, sir.

Q. And they did not attempt to take business from each
731 other, as you had formerly?

A. No, sir.

Q. Did you have anything to do with soliciting Oriental business?

A. No, sir.

Q. Now, what class of business was there moving between here and San Francisco for which you solicited?

A. I really could not say now the business. There was occasional hides; of course the lumber went down there, but that was not against the O. R. & N; schooners would take the lumber cheaper. These box shooks was one commodity.

Q. Box shooks; now just state what box shooks are.

A. Well, they are knocked down boxes; the boards to make a box before they are nailed up, in other words.

Q. Well, I knew what they were but I could not pronounce it; I wanted to have you explain it. Now, these were shipped from here to San Francisco?

A. Yes, and different points in California.

Q. Over your line of road?

A. Yes, sir.

Q. Did they also move to San Francisco over the boats of the O. R. & N?

A. Yes.

Q. Or by the boats of the O. R. & N?

A. Yes.

Q. Where were these articles made?

A. Right across the river, some of them; the Standard Box Company, and some of them right up here at Jefferson street.

Q. And was that business actively solicited by the O. R. & N. boats and yourself as representing the Southern Pacific?

A. I know it was solicited by me, and I presume it was by them.

Q. Because they got a part of it?

732 A. They got some of it. I know I was trying to get it away from them on certain shipments I remember of.

Q. Now you spoke of hides; where did the hides come from?

A. Portland.

Q. That is from the packing houses here at Portland?

A. From the dealers here. They came in carloads and less than carloads from the country into Portland, and they were baled and shipped both to San Francisco and to the east from Portland.

Q. How did those hides move from here to San Francisco?

A. They moved by rail and water.

Q. And were you soliciting that business as against the O. R. & N. boats?

A. Yes, sir.

Q. Now on shipments of hides: I have asked you about shipments of hides to San Francisco; now what about shipments of hides to the east; how did they move?

A. They moved via the rail lines and they moved via the Sunset.

Q. Did they move via the O. R. & N. and the Union Pacific?

A. I presume so; they got their share of them; possibly more so than we did; we didn't get so much of them; we solicited them, however.

Q. Solicited them from those people to whom they were brought in Portland, and who baled them?

A. Yes, sir.

Q. And you got some, did you, by that solicitation?

A. Yes, sir.

Q. Now after the common management here how were they solicited, if you know?

733 A. They were solicited via the Union Pacific, and I am not positive whether we solicited that via Sunset or not; I would not say as to that, but I presume that we did.

Q. Well, you solicited it without caring which way it went as long as you got it?

A. No; we usually on Atlantic seaboard business we aimed to get the long haul.

Q. To get it for the Sunset, if you could?

A. Yes.

Q. And did some of the hides go to the Atlantic seaboard points?

A. Yes, sir.

Q. Are there paper mills up here in the Valley?

A. Yes, sir.

Q. Where does the paper go?

A Well. I think that that is local consumption; I never solicited that, because it is out at Oregon City and up the river.

Q. You had nothing to do with the paper?

A. No, I had nothing to do with that.

Mr. COTTON. You say you had nothing to do with paper?

WITNESS. No, sir.

Mr. COTTON. Didn't solicit it?

WITNESS. No, sir.

Q. He said it was out of town. The reason was because it was out of the city?

A. It was out of the city and the traveling freight agent, or sometimes the arrangement was made in the office.

Q. Well, you don't mean by that then that your road did not solicit it, but that you personally did not?

A. No, no; I mean that I personally didn't solicit it.

Q. One thing I forgot to ask you; which way did Cincinnati common points business move to Portland?

734 A. When it was Southern Pacific before the consolidation it moved by the Queen & Crescent, or the L. & N. to New Orleans, then to Portland via the Sunset all rail; that was our solicitation; some of it moved, however, via Ogden when we could not get it the other way.

Q. If you could not what?

A. When we could not get it via the long haul we would take the short haul, take it at Ogden and Sacramento.

Q. And did considerable business come out that way for those two roads?

A. Yes, sir.

Q. What class of business?

A. Well, there was whiskey and merchandise of different classes, canned goods, I think vehicles sometimes in that neighborhood; I can't say; it was just the general class of merchandise that would come from that particular territory.

Q. Well, was there any difference, so far as came under your observation, in the movement of that class of commodities from that territory after the amalgamation of the roads?

A. Well, the instructions were to get it via Union Pacific and Omaha.

Q. And did it largely move that way rather than the Southern route?

A. I think that any business that we had afterwards moved via that line.

Q. How is that?

A. Any business that we had to my knowledge moved via the Union Pacific.

Q. I think that is all I have to ask Mr. McCusker.

Commissioner LANE. You desire to cross-examine, I suppose?

Mr. COTTON. Yes.

735 THOMAS McCUSKER

(recalled) testified:

Cross-examination by Mr. COTTON:

Q. Mr. McCusker, you stated that no livestock, or practically none moved via the Sacramento, because of the mountain haul and the extra distance.

A. Yes.

Q. Kindly explain about that extra distance and the mountain haul.

A. I believe there is a law in Oregon regarding the unloading at certain points within certain time, of livestock, and to my knowledge I know I have not solicited any of the freight. I do not believe any one has; it is possible, but I do not know it. I know I was told not to solicit any livestock.

Q. That was long prior to 1901?

A. Yes.

Q. Now, what about the extra distance; how much farther is it to Ogden via Sacramento Route than by the O. R. & N. and the Oregon Short Line, do you know?

A. No, I do not. The mountain haul takes it a little bit longer; we figure it a couple of days against us on Chicago; at least two days.

Q. It is practically the increased distance from here to Sacramento, is it not?

A. It is possible that it is; that is, the extra mountain haul, you cannot make the time on the mountains that you can by the other route.

Q. How far is it from here to Sacramento?

A. It is about 680 miles, I should say, or in that neighborhood.

Q. And when you get through taking freight by Sacramento, you would get it to Ogden?

A. How is that?

736 Q. After you hauled freight down to Sacramento and then hauled it East you would get it at Ogden?

A. Yes.

Q. And that is as far as the Southern Pacific got it?

A. Yes, sir.

Q. Just exactly as when the Union Pacific gets it today, taking it down on the O. R. & N. and the Short Line?

A. I think they get it by Granger, don't they?

Q. Don't they get it either way?

A. Possibly, yes, but I think they take it by Granger.

737 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by Louis Lochman, a witness before the Interstate Commerce Commission, who testified on the 24th day of January, 1907, at the City of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Lochman were on the stand giving the same testimony.

Mr. EVARTS. Yes.

LOUIS LOCHMAN

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live?

A. Salem.

Q. What is your business?

A. Hop business.

Q. How long have you been in the hop business in Salem?

A. Fifteen years.

Q. Prior to 1901 what was the fact up there as to whether you were frequently solicited for shipments of hops by representatives of different railroads?

A. Yes, sir; we were solicited by the representatives of all the different railroads; the transcontinental lines.

Q. Were you solicited separately by the Southern Pacific and the Oregon Railroad and Navigation Company and its Eastern connections?

A. We were.

Q. Are you now?

A. No, sir.

Q. Mr. Lochman, how did you ship your hops to the East in those days, over what lines?

A. The Southern Pacific, Union Pacific and D. & R. G.

738 Q. Did they move by Sacramento to Ogden and then over the Union Pacific or D. & R. G.?

A. No.

Q. How did they move?

A. They moved over the O. R. & N. and Short Line and then by the Denver & Rio Grande.

Q. How did they come to Portland from Salem?

A. By the Southern Pacific.

Q. By rail?

A. By rail and boat.

Q. That is, the O. R. & N. boats?

A. Yes, sir.

Q. How long ago did those boats quit running?

A. Two or three years ago I think, probably longer.

Q. Do you ship hops by the O. R. & N. now starting them by boat from Salem?

A. No, sir.

Q. They go by rail now, do they?

A. We cannot ship them by boat from Salem over the O. R. & N. now; the boats are not running.

Q. But I didn't know whether you could ship over the other line of boats that has been spoken of.

A. Yes, we can.

Q. Do you?

A. We do.

Q. To what points do you consign hops that you ship down as far as Portland over that steamboat line?

A. New York and London.

Q. How do they move to the East?

A. The hops that have been shipped by boat have nearly all gone by the Rio Grande lines and then the connecting lines from Denver east.

Q. Have you made any effort to route cars directly from Salem by the Rio Grande?

A. Yes, sir.

Q. Will you state just what success you had in doing so?

739 A. We have had no success.

Q. What has been the trouble?

A. Well, the agent at Salem notified all parties in order to ship by Rio Grande lines it would be necessary to secure Rio Grande cars, and in their absence we had to go either Union Pacific or Southern Pacific.

Q. Is any distinction made as to the kind of car you are compelled to use if you ship over Union Pacific or Southern Pacific?

A. The Southern Pacific Sunset cars went Sunset; Union Pacific went over Union Pacific.

Q. But I am speaking at the present time. At the present time you can ship either on the Southern Pacific or Union Pacific in any car that happens to be in the yards, can't you?

A. Yes.

Q. But if you want to consign anything over the Rio Grande you must procure a Rio Grande car?

A. Yes, sir.

Q. Have you by reason of that fact been able to make shipments over the Rio Grande?

A. We have not.

Q. Did you formerly make large or small shipments that way?

A. Large and small.

Q. And you have been in the business for fifteen years?

A. Yes.

Q. What soliciting agents are now in the field up there requesting consignments of hops?

A. You mean of the transcontinental lines?

Q. Yes.

A. The Rio Grande man is about the only one, except the local agent at Salem for the Southern Pacific and Union Pacific.

Q. The local agent at Salem represents both the Union and

740 Southern?

A. Yes, sir.

Q. How do your hops mostly move now?

A. By rail.

Q. You don't move any hops to the east by Sunset?

A. No; they don't care to have the business apparently.

Q. Have you since 1901 shipped hops that way?

A. Very largely, yes.

Q. Up to what time?

A. Up to a year ago.

Q. Who routed them?

A. We did.

Q. How did you happen to commence shipping by rail; who suggested it to you, if anybody?

A. Well, there was no special reason. If the business was going to the Atlantic seaboard naturally the Southern Pacific wanted the long haul, and preferred to have them go Sunset. If we declined to ship them Sunset they were willing to take them for Omaha.

Q. You say at the present time it is going all rail?

A. All rail.

Q. By all rail do you mean that it goes by Omaha?

A. I mean via Omaha, or else Rio Grande line, what hops might be shipped by boat.

Q. But you don't ship by Sunset Route now?

A. No.

Q. Who made that change in routing; was it the railroad officials that changed it from Sunset? You said they preferred formerly to ship that way.

Q. The agent at Salem notified us that they preferred to have the business go by Union Pacific.

Q. Notified you to that effect?

A. Yes.

Q. How long ago?

A. Four or five months ago; at the beginning of the hop season.

741 Q. And it has gone that way, has it?

A. Yes, sir.

Q. Now in the old days of competition up there in the shipment of hops, what extra facilities, if any, were rendered you or what assistance was rendered you by the agents of the respective lines competing for the business?

A. Well, up to a year ago we could go to work and ship hops in transit to any point north of Eugene; for instance, to Salem and consolidate them there, or we could ship them to Portland without paying a local freight, and consolidate them there and get free storage.

Q. Where?

A. At any point for sixty days, on the line of the Southern Pacific.

Q. How is it now?

A. That is all done away with now. We have to pay local freight and storage from the time the hops are put in the warehouse. The Southern Pacific say now they are acting purely as warehousemen.

Q. They used to be a transportation company, didn't they?

A. Yes, sir.

Q. Now, Mr. Lochman, what facilities, if any, were formerly furnished you when you shipped Sunset? Were there any special facilities furnished you there?

A. We got thirty to sixty days free storage on the Southern Pacific dock at New York.

Q. Do you still enjoy that privilege?

A. No, sir.

Q. In fact, your stuff don't go that way now?

A. Very little of it.

Q. Was there any help furnished you in marking your hops and assisting you in getting out your shipments when those men
742 were all competing with one another?

A. Yes, sir, there was. It was not of any consequence, but if we wanted to make a shipment, and a competing line wanted the shipment, the agent would say: "Well, I will come down to the warehouse and help you mark the bales and weigh them up," and the shipper would invariably give that particular line the business in consideration of that assistance.

Q. That was the sort of competition that was in vogue there years ago?

A. Yes, sir.

Q. And that has disappeared as between the Southern Pacific and the O. R. & N.?

A. Yes, sir.

Q. How far from here is Dayton?

A. Twenty or twenty-five miles I guess.

Q. When did the competition for business between the Southern Pacific and the Oregon Railway and Navigation Company stop; it was about 1901 or later?

A. About that time.

Q. Dayton is this side of Salem?

A. Yes, sir.

Q. The O. R. & N. boats run as far as Dayton, don't they?

A. They do.

Q. And the other line runs further up?

A. As far as Corvallis.

Q. How far is Corvallis from here?

A. About 100 miles up the river.

Q. Are these boats that are run by the other line pretty fair boats?

A. Very good.

Q. It appeared at Seattle the other day that the O. R. & N. boat above Salem, I believe, was a skimming dish. Those boats
743 running up there now are not skimming dishes, are they; they are pretty good boats, are they not, that run up to Corvallis?

A. Yes, they take six, seven or eight or ten carloads of hops at a shipment.

Q. There is some stage of water in the Willamette River habitually?

A. Yes, sir.

Q. Do you know of any reason why there is not water enough to run the O. R. & N. boats up there as well as the boats of the other line?

A. No reason that I know of.

Q. That is all.

Examined by Mr. COTTON:

Q. How long does this boat run up to Corvallis each year?
A. Until the water becomes so low.
Q. How long does the water stay high enough so it can run?
A. Probably until June or July; perhaps a little bit later.
Q. What period during the year?
A. That they run up there?
Q. Yes.
A. From about December, depending a good deal on the volume of water in the river.
Q. Do they run a boat daily?
A. To Corvallis?
Q. Yes.
A. No, sir, I think every other day, if I remember right.
Q. They give just as good service as the O. R. & N. ever gave, or a little better?
A. I wouldn't say so.
Q. Just as good?
A. Just as good.
Q. But they were running there when the O. R. & N. boats were running for a while, were they not?
A. Yes, sir.
Q. Do you know what became of the O. R. & N. boats?
744 A. I do not.
Q. Were they not worn out and lost?
A. I don't know.
Q. Do you know whether they are on the river now or not?
A. I think one is.
Q. It took more than one boat to keep up the route, didn't it?
A. Yes.
Q. Do you know what happened to the other boat?
A. I believe she sank.
Q. Did they wreck boats very frequently on the Willamette River?
A. Well, they settle on a sand-bar or strike a snag and are temporarily laid off until they pull them off with a line.
Q. Deep water navigation up there consists of a boat drawing about six or eight inches of water, doesn't it, up to Corvallis?
A. That is my understanding; yes.
Q. And it is rather of a skimming dish proposition, isn't it, most of the time?
A. No expert on the subject.
Mr. SEVERANCE. Do you want the impression to go out, Mr. Cotton, that the O. R. & N. is too poor to buy a new boat?
Mr. COTTON. I think that may be.
Q. Now, Mr. Lochman, in regard to this service; the O. R. & N. is running one boat to-day to Independence, isn't it?
A. Not to my knowledge.
Q. Running up to Dayton?

A. Yes, sir.

Q. The only boat they have left that is useful for that Willamette River business—it still is on the run, isn't it?

A. I suppose, to Dayton.

745 Q. Is the Northern Pacific and the Great Northern and the Denver and Rio Grande man up there now helping to weigh hops?

A. No, sir.

Q. He has stopped weighing, too, hasn't he?

A. The Great Northern and the Northern Pacific haven't been up there soliciting business for the past two years to my knowledge.

Q. The Northern Pacific and the Great Northern have not been up there soliciting business for two years?

A. Perhaps more.

Q. Does the D. & R. G. man go up and help you weigh hops now?

A. No, sir; he comes up there frequently and solicits business.

Q. The O. R. & N. and the Southern Pacific continued the practice of helping you weigh up hops and gave you free storage and warehouse until about six months ago, didn't they?

A. They gave us free storage and free in transit movement.

Q. Until about the 20th of August of this year?

A. Yes, sir.

Q. When the new interstate-commerce act went into effect?

A. I don't know; I think that was the time.

Q. And the O. R. & N. and the Southern Pacific therefore continued these practices up until the 28th of August, which the Northern Pacific and the Great Northern discontinued two years ago. Is that right?

A. I didn't catch the question.

Q. Up until the 28th of August this free storage continued, didn't it?

A. It did.

Q. And stopped only then?

A. It did.

Q. That was the 28th of August, 1906?

A. Yes, sir.

746 Q. The Northern Pacific and the Great Northern have not solicited your business for about how long?

A. Oh, quite a number of years; three or four or five years, maybe.

Q. And the D. & R. G. man—when did he stop?

A. He continues to solicit it by river shipments.

Q. Then these arrangements that you have referred to were not discontinued by virtue of anything which took place in 1901?

A. Which arrangements?

Q. This free weighing and all that sort of stuff?

A. I don't quite understand you, Mr. Cotton.

Q. I say this free weighing and free storage——

A. I don't know what you mean by free weighing. We did our own weighing, but frequently a competing line would assist us in

weighing up a lot of hops, but very rarely; it was not common practice, but occasionally happened.

Q. But the free warehouse and consolidation of shipments at given points continued up until this year?

A. Yes, sir.

Q. And did not cease in 1901?

A. No, sir.

Q. That is all.

By Mr. SEVERANCE:

Q. Mr. Lochman, you said that the D. & R. G. shipments came down to Portland by boat?

A. Yes, sir.

Q. Why is that necessary?

A. Because we could not ship it in Southern Pacific cars over the D. & R. G.; couldn't get the cars.

Q. When you got to Portland where there was competition——

747 Mr. COTTON. Mr. Severance, there was another question I would like to ask Mr. Lochman.

Mr. SEVERENCE. Very well; proceed now.

Mr. COTTON. You have shipped this year more or less by Northern Pacific and Great Northern?

WITNESS. No, sir.

Mr. COTTON. None at all?

WITNESS. No, sir. Pardon me, Mr. Cotton. We did make shipments of probably four or five cars by boat to the Northern Pacific, but none by the Great Northern.

Mr. COTTON. I see. That is all.

Q. Mr. Lochman, I was asking you at the time Mr. Cotton asked this last question about those shipments over the D. & R. G. You say in order to make a shipment over that route you have been compelled to ship into Portland by boat?

A. Yes, sir.

Q. When you get into Portland where there is competition for the east between the Harriman lines and the Northern Pacific, you are able to get a car to go over the D. & R. G?

A. When we ship our hops from points on the river, when we ship them right through to destination, and we control the routing then. In other words, we ship over the O. C. T. Co. boats right through to London, New York, Chicago or any other point, and send that receipt to the O. R. & N. Company, and it issues a bill of lading on the O. C. T. Company's receipt.

Q. And that is because you get the stuff into Portland without putting it into the car?

A. Yes.

Q. When you get here you can get a car?

A. Yes, sir, I presume so.

748 Q. Well, that is what happens anyhow?

A. I presume they put them in a D. & R. G. car, but I don't know.

Mr. COTTON. Who did?

WITNESS. I say I should assume they used a D. & R. G. car if it is routed that way. They may have been put in a Short Line car and transported to Ogden and there transferred, and we ship them from the point of origin to destination and take no further interest in it.

Q. They went over the D. & R. G. line ultimately?

A. I don't know.

Q. You don't know about that?

A. No, sir. They were routed that way.

Q. You presume they went that way?

A. Yes, sir.

Q. Whose bill of lading did they give you?

A. The O. R. & N. Company.

Q. And the cars were loaded here at Portland and went out over the O. R. & N. to Ogden?

A. I presume so, we never made any personal examination or supervision over that.

Q. You have no difficulty in making shipments of that kind when you send them down by boat, do you?

A. None whatever.

Q. There was no refusal to send the business over the D. & R. G. road by the O. R. & N., was there?

A. No, sir; we got our receipt at Salem billed to destination, and got the bill of lading.

Q. You got your cars at Portland?

A. I don't know; I presume so.

Q. But you could not do that at Salem?

A. No, sir.

749 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by Fletcher Linn, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the City of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Linn were on the stand giving the same testimony.

Mr. EVARTS. Yes.

FLETCHER LINN

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Linn, where do you live?

A. In Portland.

Q. What is your business?

A. I am manager of the Oregon Furniture Mfg. Co.

Q. You manufacture furniture here in Portland?

A. Yes, sir.
Q. And ship it out from here?
A. Yes, sir.
Q. Do you bring commodities in from the east?
A. Not very much now, no, sir.
Q. Principally outgoing shipments?
A. Nearly all outgoing.
Q. Previous to 1901 how did you ship from here to San Francisco, if you ship that way at all?
A. Previous to 1901?
Q. Yes.
A. Well, we shipped by rail or boat.
Q. At that time was there competition as between the boat and the rail lines; were they each soliciting business from here to San Francisco; I mean did they have solicitors out?
750 A. Well, I don't recall whether they did at that time or not.
Q. Well, several years ago; I won't put it in 1901.
A. We never had much soliciting done for freight in California at all, and I could not state.
Q. Isn't it a fact, sir, that these two lines were trying to get your business, the boat line and the rail line, from here to San Francisco and California points?
A. Not that I recall, no, sir.
Q. Did you ship both ways?
A. We shipped principally by rail, not very much by boat.
Q. But some by boat.
A. Very little; the rates were about the same and we shipped altogether by rail; it was more convenient for us.
Q. The rates were about the same, were they?
A. Yes, sir.
Q. Now has there been any change made recently in freight rates from Portland to San Francisco by boat?
A. Yes, there is on furniture.
Q. That is what I mean, on your goods. What change was there?
A. Well, the rate has been made so large by boat we can't ship by boat any longer.
Q. Was there some change made in the method of computing the weight?
A. Yes; it was formerly taken by weight and now by measurement.
Q. Now by measurement?
A. Yes.
Q. And that increases the freight rates how much by boat?
A. Well, it is about four times the rate by rail.
Q. About four times the rate by rail on furniture?
751 A. Yes.
Q. So that you have to move everything now——
A. By rail.
Q. By rail. That is all.

Examined by Mr. COTTON:

Q. No change in the rail rates?

A. I think there has been a slight increase in the last three years.

Q. Well, but I mean within the last—when the steamship rates were made?

A. No, I think not.

Q. The rail rates remained the same?

A. Remained the same.

Q. And prior to this change you shipped largely by rail, didn't you?

A. Yes.

Q. And the rail rates have not gone up?

A. No.

Q. Therefore, the raise in the ocean rates has not affected your shipments?

A. It has affected us, because we can't get service to get our goods out, and the result is we can't ship them at all now.

Q. That is, you can't get the service on the rail?

A. We can't—that is, for carload business; we have to ship everything for less than carload lots.

Mr. SEVERANCE. How is that?

WITNESS. You can't get cars to load full cars; we have to haul everything and ship it in less than carloads.

Q. You don't know, Mr. Linn, anything about ocean conditions and the demand for lumber from here to San Francisco, do you?

A. Not—Oh, I know there is a big demand for space; we
752 can't get space by steamer very well at all.

Q. There are other lines of steamers besides those of the O. R. & N. running.

A. Well, there are a couple of lines; I don't know just who are the owners of them.

Q. The raise was common to all the ocean lines, wasn't it?

A. Yes, sir.

Q. It took place how long ago, sir?

A. About—I think four or five months ago perhaps.

Q. Four or five months ago?

A. Yes; perhaps not so long.

Q. I thought it was only about thirty days ago.

A. No; it is longer than that; I know it has been three months.

Q. Three months?

A. Yes; because we have claims that are that old.

Q. That is all, is it?

By Mr. SEVERANCE:

Q. Just one question. You say you can't get cars to ship to San Francisco to ship in carload lots and you have to ship L. C. L.?

A. Yes, sir.

Q. How long has that been the case?

A. Four or five months.

Q. Since the time these steamer rates went up?
A. No; it was before that.
Q. Before that?
A. Yes.
Q. Have you formerly shipped carload lots to San Francisco?
A. Yes, sir.
753 Q. From whom did you get the information that you would be obliged to ship L. C. L.?
A. We simply can't get cars. We order cars and we can't get them; we have to get them out some way or other, and we have to notify our customers the only way we can get them out is in a wagon load at a time.
Q. That is all.
Commissioner LANE. Is there a general car shortage in this system out here?
WITNESS. It seems to be at our place; I think there is a general shortage, but I think there are general conditions that make it a little worse where we are located.
Commissioner LANE. What are those conditions?
WITNESS. Well, we are on the west side of the river and do not have access to the terminal grounds at the present time, and there are few cars on that side.
Commissioner LANE. You don't find that there is any difference between your condition and anybody else's condition?
WITNESS. Well, not on this side of the river; I think people who have access to the terminal grounds get more than we do.

By Mr. COTTON:

Q. How far is that factory from the terminal grounds?
A. It is about three miles in a direct line.
Q. How far does a car have to go from the terminal grounds in order to reach your factory, how far does it have to travel?
A. I judge about eighty miles; forty miles out and forty
754 miles back; still on California business there is no—it is a direct route.
Q. Yes, but you know there has been an embargo against California shipments at various times this year on the Southern Pacific line owing to the congestion of traffic down there, hasn't there been?
A. Well, that has been principally at Oakland and San Francisco. We have found trouble getting cars for any part, but as I stated, I think it is due to the location of our factory at the present time, a pure shortage in that district.

By Mr. SEVERANCE:

Q. What track is your factory on?
A. On the Southern Pacific.
Q. The Southern Pacific?
A. Yes.

Q. Well, then, what has the location of your factory got to do with the failure to get cars?

A. Well, we are on the west side of the river on the branch, not the main line of the Southern Pacific. Most of their business comes in on the main line into the terminal grounds, and of course that is where they have most cars.

Q. They have a connection, haven't they?

Mr. COTTON. Forty miles from town.

A. It is about forty miles out and forty miles back; it is a haul of about eighty miles.

Q. Well, your rates are just the same as they are from any other part of Portland, are they not?

A. Just the same, yes.

Q. And still they won't set cars over there for you to ship carload lots to California?

755 A. Well, we have not been able to get them recently.

Q. Rates are much higher L. C. L. than carload lots, aren't they?

A. Yes, much higher of course.

Q. How much higher, do you remember?

A. I should judge almost double.

Q. How far do you have to team to get to their tracks where they will allow you to put a little in cars occasionally?

A. About three miles.

Q. That is an expense you have to pay yourself?

A. Yes.

Q. And that has been going on for four or five months, you say?

A. Yes, about five months, I should judge.

Q. That is all.

By Mr. COTTON:

Q. Can't you ship carloads from Portland as well as anybody else?

A. From what point do you mean?

Q. Well, the——

A. Terminal grounds?

Q. Yes, the terminal grounds.

A. Yes, we can.

Q. You can ship all the carloads from there you want to, can't you?

A. We will ship them if they will give us the cars.

Q. Well, but I mean just the same as any other Portland merchant.

A. Well, I don't know; we can't get cars; I know that others do get them.

Q. Well, but I mean from the——

A. Terminal grounds?

Q. Yes, from the terminal grounds.

A. Yes; we would like to get some cars right now, if we could get them.

Q. There is no difference between you and anybody else, is

756 there?

A. Well, I don't know; I think there is, Mr. Cotton.

Q. What?

A. From what I gather I think others are getting cars at the terminal grounds; that is the excuse given us, that if we had access to the terminal grounds we could get the cars more readily. We don't get them. I know we have not had any there for four months.

Q. Have you asked for any at the terminal grounds?

A. Yes, we have an order in now. At the terminal grounds?

Q. Yes.

A. We will take them whenever we can get them.

Q. Have you any orders in at the terminal grounds?

A. No, we have not, but I will get them in pretty quick, I think, after this interview.

Q. Well, but you have been insisting upon these cars being delivered to you around here eighty miles?

A. No, we have not, Mr. Cotton; we have ordered the cars and we have called up, I think, every department of the Southern Pacific in the course of a few days, and if they could have provided them one place or another we would have been glad to have taken them; I think they know that.

Q. You have always ordered them on your own track down there?

A. We didn't order them any place particularly, but we ordered cars.

Q. Well, but that was understood, wasn't it?

A. Well, I suppose it was perhaps understood.

Q. Yes; and that service switching around there eighty miles for you has always been done free, hasn't it?

A. For switching around?

Q. Yes; they have charged nothing for delivering cars
757 around there to you?

A. Yes; they would for California business, I suppose. Oh, do you mean taking a car in for California?

Q. Yes.

A. No; we only pay switching charges. Where we deliver to local parties, have a car shipped from there in to dealers in the city, we pay ten dollars for it.

Q. But on a car going out of town you pay no switching charges?

A. No.

Q. You have not asked for any cars here at the terminal grounds, have you?

A. No, I have not; but I don't think I would have gotten them if I had.

Q. Well, suppose you try.

A. I will try, as I say, from now on.

Q. You have read the Oldsmobile song, haven't you? Suppose you try and see what occurs.

A. But I have filed a good many complaints. I think your officials will say that I have had it up with them pretty actively.

Q. I expect you have. Everybody else has been pressing for cars. I expect most probably they have not felt very much like hauling a car eighty miles to save you a wagon haul into the city of Portland; that is all.

Mr. SEVERANCE. Still, years ago you did not have that trouble, did you?

WITNESS. No, sir.

Mr. SEVERANCE. That is all.

Q. How long have you been out there?

A. We have been shipping from there about two years.

Q. Yes; that's all.

758 Mr. SEVERANCE. I now offer, pursuant to agreement, a portion of the testimony given by Otto Breyman, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the City of Portland Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Breyman were on the stand giving the same testimony.

Mr. EVARTS. Yes.

OTTO BREYMAN

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Breyman, where do you reside?

A. Portland.

Q. What is your business?

A. Manufacturer of saddlery goods.

Q. How long have you been in business in Portland here?

A. About fifteen years.

Q. From what part of the country, Mr. Breyman, do you import your raw material?

A. Leather we get largely from San Francisco, from California; and hardware, hames, and other things we get from the Atlantic seaboard largely.

Q. Prior to the time that the Southern Pacific and the O. R. & N. became interested together, prior to 1901, was there competition for your shipments between San Francisco and Portland by boat and rail?

A. There was, yes, sir; we shipped largely by boat at that time.

Q. How is that?

A. About five years ago we shipped leather largely by boat.

759 Q. How do you ship now?

A. Rail altogether.

Q. Why?

A. We have no steamer service.

Q. How long has that been the case?

A. Well, some little time; several years; I would not say; it has been worse this last year.

Q. Worse the last year.

A. The last two years.

Q. Been gradually growing worse?

A. Well, we have not made any attempt the past year to ship any leather to California. The only shipments we have by boat is the American Hawaiian shipments and Panama shipments.

Q. That is, you bring goods around from the Atlantic seaboard by the American Hawaiian lines?

A. Yes, sir; some.

Q. And then they are trans-shipped at San Francisco?

A. Yes.

Q. Aside from that you have given up trying to ship by boat from San Francisco?

A. Yes, sir.

Q. On account of the poor service, you say?

A. Yes, sir, entirely.

Q. How were the rates years ago on your goods between San Francisco and here?

A. Well, rates on leather used to be 25 cents per hundred pounds, and the company also carried the insurance.

Q. How are they now?

A. We made a contract every year with the O. R. & N. Company steamers to handle our leather, and in that contract they had an insurance clause, I believe. We paid 25 cents a hundred, and I think at one time we paid as low as 20 cents; but I would not be positive, it is so long ago.

Q. What are your rates by rail?

760 A. Well, from San Francisco it is 31 cents now; from Benecia it is the same; and I think it is 36 cents from Santa Rosa—I think it is, I would not be positive.

Q. Now do you ship from the east somewhat by rail?

A. We do now, yes, sir. We would ship by water if we had the steamers between San Francisco and Portland.

Q. I mean from the east.

A. We would ship by water if we had steamers from San Francisco to Portland, after we got our freight around the Horn.

Q. But you ship by rail rather than send it around by the Hawaiian line now?

A. Yes.

Q. On account of the poor service.

A. We have shipments down in San Francisco to-day. I think about 8 cases to it, that we have to be delivered here. We haven't got it all here yet; we have had two shipments or part shipments from San Francisco, and it has been on the road since June by steamer.

Q. From New York?

A. From New York; and it is down in San Francisco to-day, a part of it.

Q. Mr. Breyman, you formerly shipped by water, did you?

A. I never have to any great extent, for the reason that during the old Panama line the freight was handled in such bad shape. We have shipped more or less by the Panama line in the past.

Q. What are your rates from the east, all rail?

A. On common saddlery hardware, $1.75, less than carload lots; we never ship carload. We never asked for a carload rate, because
761 no jobber in Portland saddlery and hardware could use it hardly; they don't ship in large enough quantity.

Q. Which way do goods come when they come all rail?

A. Well, when I have the business I always have favored the Union Pacific and Oregon Short Line of late years, the last few years; I have given some to the Northern Pacific, considerable; I aim to divide it up between the companies.

Q. Did you formerly ship some by the Southern Pacific?

A. I used to patronize the Sunset route a great many years ago, not to any extent; in the winter time I did in shipping shoe dressing, I wanted to keep from being frozen; and do now in fact.

Q. Did you ship by Sacramento?

A. No, sir; we shipped by the Sunset route; that was in connection with the Morgan line.

Q. Well, I understand, but you don't ship that way any more?

A. Yes; not much; one shipment came in this fall.

Q. Do any solicitors come around and solicit you to ship that way?

A. No, sir.

Q. The Southern Pacific don't solicit your business now as against the O. R. & N. any more?

A. No; they do not.

762 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by George H. Kelly, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the City of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Kelly were on the stand giving the same testimony.

Mr. EVARTS. Yes.

GEORGE H. KELLY

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Kelly, where do you live?

A. Eugene.

Q. How far is Eugene from Portland?

A. 123 miles.

Q. What line of railroad are you on, if any?

A. The Southern Pacific.

Q. What is your business?

A. I am in the lumber business.

Q. How long have you been in that business?

A. 21 years.

Q. How long at Eugene?

A. Well, I have lived right near there and there in the lumber business for the last ten years.

Q. What is the name of your firm?

A. Booth-Kelly Lumber Company.

Q. How many mills, sir?

A. Yes, sir; we operate four mills in Lane County.

Q. Four mills?

A. Yes, sir.

763 Q. Where are they?

A. There is one at Saginaw, one at Coburg, one at Springfield and one at Wendling.

Q. On what line of roads are these mills located?

A. They are all on the Southern Pacific.

Q. How far is the nearest mill from Portland?

A. Well, I would say about 120 miles.

Q. How far is the one that is farthest from Portland?

A. About 145 miles.

Q. Are they on the main line?

A. One of them is on the main line and the others are on the branches, on the Woodburn and Natron and the Wendling branch.

Q. How far off of the main line are these mills that are on the branches?

A. Well, the Springfield mill is a mile from the main line; the Wendling mill is 18 miles from the main line, and the Coburg mill is seven miles from the main line.

Q. What is your annual cut at these mills?

A. Well, when we run full time about a hundred million feet.

Q. To what parts of the United States do you ship?

A. Well, practically all over the United States except a little part of New England and the south.

Q. Has there been any change in the rates on lumber from your points to any destination within the last two or three years?

A. Well, in some—there has been some change in rates east of Sacramento, between Sacramento and Ogden, and there has been some change in California rates, and there is another one contemplated now that we just received notice of. We used to have rates to Arizona; they were withdrawn.

Q. I want to ask you about these Arizona rates; what was
764 your rate to Arizona points?

A. Well, I think it was a mining timber rate, and I think it was about $16 a thousand feet, if I recall; something like that; it was a per thousand foot rate.

Q. When was that rate withdrawn?

A. Well, eight or nine years ago, I think.

Q. Eight or nine years ago.

Mr. COTTON. Prior to 1901?

WITNESS. Yes.

Q. Now, Mr. Kelly, is there any difference in the rates that you pay on different classes of lumber and timber that you ship?

A. Not to eastern points but to California points they make a distinction between kiln dried machine lumber and rough green lumber and railroad ties.

Commissioner LANE. What is the purpose of his testimony, Mr. Severance?

Mr. SEVERANCE. In the first place I want to show that they make a distinction between rates so as to prevent the shipment of ties, for instance, down in the territory where other lines of railroad are being constructed, and I want to show also the efforts made to induce shipments to new territory reached by the O. R. & N. and Colorado points, and others, as against shipments to the south.

Commissioner LANE. A change in the policy that has been effected recently?

Mr. SEVERANCE. Yes.

Commissioner LANE. Well, you may proceed.

Mr. LOVETT. Is there any contention that that situation was
765 affected by the relations of the Union Pacific and the Southern Pacific?

Mr. SEVERANCE. That is my understanding; if it is not correct—that is my understanding—undoubtedly he will state the facts. You say there is a difference in rates on ties and other timber.

WITNESS. Yes, sir.

Q. Now, does this difference exist as between ties and other timber of the same character, except as to length?

A. That is all the difference that there is. For instance, a standard railroad tie is seven by eight, eight feet long; that is, that is the generally accepted standard. Now that tie, if it goes to a Bay point, San Francisco or a Bay point, takes a rate of five dollars a thousand, while a piece double that length, seven by eight, sixteen feet long or any other length, would go $3.10—not $5 a thousand but $5 a ton; but the longer lengths would take the rate of $3.10 a ton.

Q. How long has that been the case?

A. Well, I could not say. The distinction was made in Interstate Commodity Tariff No. 7, I don't recall the date of it.

Q. About how long?

A. It is not an old tariff: I think probably a couple of years; maybe less than that.

Q. Within a couple of years?

A. Yes.

Q. Now prior to that time had there been any such distinction?

A. No, sir.

Q. Do you know of any reason, sir, in the nature of any commodity shipped, or the difficulty of handling it, or anything of that sort, to account for this distinction?

A. No. A tie is about the lowest grade forest product except a mining timber, and it will go in any kind of a car,
766 where a long timber might require a special car; it is easier handled and would be just as easy transported as anything else, if not easier.

Q. Has that new rule, or rather that change of rate putting one at a higher rate than the other, had an effect on your business?

A. Yes.

Q. What effect?

A. Well, we can't make deliveries of any ties in San Francisco or stock in territory where the Western Pacific are trying to buy ties.

Commissioner LANE. How long since that rate was put in?

WITNESS. Well, I could not just give the date, but I would say within the last two years; it is Interstate Commodity Tariff No. 7. It is a new tariff.

Q. Now, Mr. Kelly, have there been any efforts made by the representatives of the Southern Pacific road to induce you to change the direction of your shipments to points?

A. Well, previous to 1901 everything that we shipped went south via Sacramento and Ogden, and since that time it all goes north via Portland and Ogden.

Q. Why?

A. Well, the rates were withdrawn south via Sacramento and Ogden, and the shipments were all diverted this way.

Mr. LOVETT. Shipments to what points?

Q. Shipments to what points, Judge Lovett suggests?

A. Well, to Colorado or any of that interior mountain country. Previous to 1901 we did not ship anything east of Denver; that is, we used to go down into New Mexico and down through there sometimes in connection with the Santa Fe, but after the amalga-
767 mation of the Union Pacific with the Southern Pacific the rates were extended on through to Chicago via Portland; but they never had that rate via Sacramento and Ogden.

Q. Now what way do you mean the rates were withdrawn into Arizona? Do you mean you can't ship there at all, no rates on what you ship?

A. Well, there is a rate in there now; I think it is about 67 cents a hundred most of the points to Nogales for instance; that is, the clearing point between Arizona and Old Mexico; the rate is 65 cents a hundred, $13 a ton, from our mill; now we can't ship beyond that.

Q. What was your former rate there?

A. Well, I think it was about $16 a thousand feet as I recall; it has been a good many years ago since we shipped in there. It was a per thousand foot rate instead of per ton rate.

Q. In case of green timber how much does it weigh?

A. 3,300 pounds to the thousand feet.

Q. Can you give an estimate, Mr. Kelly, of the extent of your traffic that now moves to Colorado points by way of the O. R. & N. that formerly moved by the Southern Pacific via Sacramento?

A. Well, that varies, owing to market conditions. A man always tries to sell where the market is best. Now a couple of years ago the market was very bad in Colorado on account of the coal strike, and we shipped scarcely anything in there, and I think there is just about ten per cent of our cut goes into Colorado; about seven million feet, I think, we shipped in there last year, and that all goes via Portland, that formerly went the other way.

768 Q. Are there any other points outside of Colorado points that are affected by this diversion of shipments around by the O. R. & N. that formerly went by the Southern Pacific?

A. Yes; everything in Utah south of Ogden.

Q. Can you give an estimate of the extent of that traffic from your mills?

A. Well, we never have had a very large business in Utah. It is the Portland mills that had that territory largely, and we never shipped in there much: I suppose maybe we shipped three million feet a year in Utah.

Q. Then you say seven millions to Colorado, three millions in Utah, which would be about ten millions of feet in those two states.

A. Yes, sir.

Q. Is there any other traffic that is affected by this change aside from that of these two states you have mentioned?

A. No. You see before the Harriman people got the Union Pacific we shipped everything into Southern Utah, Colorado, California, Arizona and New Mexico.

Q. That was your sole market.

A. That was our sole market; and after the consolidation of the lines why we began to ship east then and go clear to the seaboard.

Q. And you mean by that you made up what you lose in the California and Arizona markets by creating a new market east?

A. Yes, very much more in quantity of output. Our output is very much more than it was then, and some years it is a very much better market. We prefer the California market to any other, but still our shipments to the east have increased. In 1903 we

769 shipped about thirty per cent of our cut east—in 1904 I should say thirty per cent; in 1905 forty per cent, and in 1906 sixty per cent went east via Portland.

Commissioner LANE. You have not been embarrassed then by the changes effected in 1901?

WITNESS. No; while we have in a measure lost some territory, we have gained more territory.

Commissioner LANE. Your field is widened?

WITNESS. The field is widened, but we don't consider the market probably quite so good. The best of lumber going to California is $2 a thousand higher now than lumber going east; so a man would prefer to sell in California.

Q. Explain that. How do you mean, that the best is $2 higher?

A. Well, the market is better down there and the supply is—the California market is better.

Q. You mean by that taking the rate and the market value of lumber both into consideration?

A. Your lumber brings you $2 a thousand more now under present conditions in California than it does if you ship east.

Commissioner LANE. That was not so up to two years ago.

WITNESS. Only in places. San Francisco usually is the lowest lumber market there is on the coast; that is a kind of a dumping ground for everybody; but the last year it has been about one of the best markets, and of course the prices of lumber in interior California is fixed by the price of lumber at Bay points, and that is made a good market all over the State.

770 Commissioner LANE. So when these changes were effected, conditions were different in California—the price was better?

WITNESS. Yes, as regards Bay points.

Q. And what is the difference in regard to your shipments now in California?

A. Well, practically 40 per cent last year.

Q. How was it prior to these changes in the rate, the adjustment of the rates?

A. Well, prior to 1901 I would think probably more than eighty per cent in California and Arizona.

Q. That is all.

Examined by Mr. COTTON:

Q. You say in former years eighty per cent of your output went to California?

A. To California and Arizona.

Q. Your output then was about how much per year?

A. Well, since 1901 we have increased our output about 35,000,000 feet.

Q. Every year?

A. No; I say about 35 million is the increase in our annual output since 1901. We probably cut—we shipped probably 60 million feet.

Q. And of the old 35 million feet, or of the old 25 million feet, about eighty per cent went to California?

A. Yes.

Q. And a large part of that was Southern Pacific company material, wasn't it, or a substantial part?

A. Well, it is yet; a good deal of our material is Southern Pacific material.

Q. And about how much of this eighty per cent of the 25 million was company material in those days?

A. Oh, I suppose twenty per cent of it.

771 Q. Twenty per cent?

A. Yes, sir.

Q. Then there was only about sixty per cent of 25 million feet that went to California for commercial usage?

A. Yes, sir.

Q. How much are you shipping now to California, or would you ship on rates if you could get the cars?

A. That is pretty hard to say, because a man would take on a lot more business if he could get the cars. This week I have 1640 carloads of lumber sold in California outside of company material.

Q. Then the rates have not prevented you now from getting to California; there is nothing in the rate adjustment which prevented you from getting there now?

A. Not until this new rate goes into effect that they have given us notice of.

Q. Your old rate was $3, wasn't it?

A. $3.10 a ton to Bay points.

Q. $3.10 a ton for how many miles?

A. Oh, I think something about seven hundred.

Q. 700 miles; that is considerably less than half a cent a ton a mile, and over the Siskiyou mountains?

A. Yes, it all goes over the Siskiyou.

Q. And they have brought empty cars north to take away the business?

A. Well, at times they do, and at times they don't; there haven't been any empties coming north lately.

Q. There haven't been any empties moving any place; isn't that right, Mr. Kelly?

A. Well, we have had a great many empties from the other
772 way. We have had good car service except in 1903 and this year.

Q. Now this year, Mr. Kelly, what would have been the effect on your business as you have observed it if a car pool had not existed between the O. R. & N. and Southern Pacific Company, and you had not been able to get cars over the O. R. & N.?

A. Well, that depends; we always haul in the direction we think we are going to get cars. Now we always figure we are going to get a car shortage in the fall of the year, and when we used to sell lumber,—we used to sell Mr. Schwerin lumber we always took that into consideration, and so did he, that he would furnish cars, and so did he, that he could furnish cars in the fall of the year; and our business now is best with railroads, because they will hustle to get you the equipment.

By Commissioner LANE:

Q. Do you find a difference in getting cars between orders you have for railroads and orders you have for other shipments?

A. Yes, you can't get a car for anything now only for railroad business; you can't get a car for commercial business north or south.

Q. The railroads always furnish you with plenty cars to move their material, do they?

A. No, not plenty, but then you stand a lot better chance. For instance, the Harriman people are building something like six thousand refrigerator cars. We took on that business, because we thought during the scarce time of cars we would get the cars.

Q. Where are they building them?

A. At McKeesport, Pennsylvania, and Chicago; they are
773 scattered all around. Pressed Steel Company and the American Car Company.

Q. So that in the end these extra facilities they furnish you with cars would tend to relieve them?

A. Well, refrigerators won't do any good. They let you ship laths.

Q. You can ship shingles in the refrigerators in the northwest, can't you?

A. We don't manufacture shingles.

By Mr. COTTON:

Q. How far are your mills south of Portland?

A. From 120 to 140 miles.

Q. They make a common rate from these points east, do they not, the same as the Portland rate?

A. Well, to most territory; I don't know anything about the Portland rates over the Northern roads in the territory, but into the territory of the Harriman lines we have the same rates.

Q. The same rates as Portland?

A. Yes.

Q. And that condition of things has prevailed for how long?

A. Oh, I think five years, something like that.

Q. What?

A. Five years.

Q. About five years?

A. I would think about five years.

Q. Formerly your rates on the Northern Pacific extended to a limited western territory, didn't they?

A. Yes, sir; we very seldom got anything east of Denver; if we did it was something we had to absorb a differential on.

Q. Since 1901, since what has been termed the amalgamation, you can ship to any states in the east?

A. Yes, sir.

Q. What is your rate, $5 to Missouri River?

774 A. Fifty cents a hundred.

Q. Fifty cents; I mean ten dollars a ton.

A. Ten dollars a ton.

Q. What is your rate to Chicago?

A. Fifty cents plus a switching charge of two dollars.

Mr. SEVERANCE. Just the same to Chicago as to the Missouri River?

Q. The same as to the Missouri River.

A. Yes, just the same.

Q. And you pay no more than the Portland mills do?

A. Just the same rate.

Q. Just the same rate; and you are largely shipping in Union Pacific and O. R. & N. cars east, aren't you?

A. Well, we catch any kind of cars; we get a lot of foreign cars.

Q. Well, they are cars that come to you from the north?

A. Nearly all the car supplies come from the north now.

Q. And that has been the case practically all this year?

A. Yes; we get no cars from the south except prior to the first of July we got a good many cars from the south, and along in December of 1906 we got a good many cars from the south; since then we have had no cars from the south.

Q. If you had been working on the cars from the south say since about the first of July, you would have had to shut down long ago, wouldn't you?

A. We would have been out of business long ago.

Q. You also sell company material to other railroads besides the Harriman lines, don't you?

775 A. Yes, and nearly—well, all the great systems in the north nearly, the St. Paul, Northwestern, Rock Island, Illinois Central.

Q. You get their cars down there, do you, for their material, or what kind of cars do you get for them?

A. Well, most any kind of a car that will go home that way. Now take the C. & N. W. material, we ship a great deal of that; we have had their contract for a great many years and take most any kind of a car that will go east over the Union Pacific.

Q. Your shipments now amount to about how many million feet per year; that is, say east of this old territory, east of Colorado?

A. Well, I presume about forty million feet.

Q. About forty million feet?

A. Yes, sir.

Q. That is more than your former total business?

A. Well, it was more than our business when we first went into business.

Q. Well, more than your business in 1901?

A. No.

Q. What was your business in 1901?

A. Well, about sixty million—sixty to sixty-five millions.

Q. About sixty millions?

A. Yes.

Q. Now, forty million feet of that goes into entirely new territory that was opened up as a result of the rates given by the O. R. & N. and Southern Pacific north?

A. Yes.

Q. Your Colorado shipments were about seven million feet per year?

A. I think that is about what we shipped in there last year; yes.

Q. And in former years what did you used to ship, that is prior to 1901?

A. Into Colorado?

Q. Yes.

776 A. Well, that is hard to say; but not so much though as we have shipped this year, because we didn't have the output, but about the same percentage of our cut, I think, went in there.

Q. There has been no adjustment in the rates to keep you out of business in any way, has there, at all? That is, the rate adjustments rather have been to increase your business than decrease it?

A. Yes; as I say the only places where we have lost territory has been the territory across between Sacramento and Ogden and in Arizona; that is the only place where we have lost territory.

Q. And that was on ties, wasn't it?

A. No: we shipped all kinds of material in there across Nevada. It is nearly all a low grade of building material.

Q. Why did you lose territory in between Sacramento and in the Ogden territory?

A. Well, those rates all across Nevada were increased.

Q. When?

A. Oh, I don't know; it has been several years ago; it is an $8 rate from the state line all the way across to Ogden now.

Q. And how long ago was that increased?

A. Oh, I could not say.

Q. And your rates into Arizona, how are they?

A. Well, they are so high that we don't ship anything into Arizona except an occasional car of flooring we ship to Nogales, but we ship through there on south.

Q. That raise took place about eight years ago, or thereabouts?

A. I think so; yes, it was a good many years ago, I know.

777 By Mr. SEVERANCE:

Q. Prior to 1901 when you routed your stuff to Colorado, for instance, by the Southern Pacific around by Sacramento, how did it move from Ogden and over what line?

A. D. & R. G., and occasionally a car by the Midland.

Q. How does it move now?

A. North Union Pacific Denver business. Of course we have some local business at local points on the Rio Grande line.

Q. Do you sell material to the Denver & Rio Grande and Western Pacific?

A. In former years we sold a great deal of material to the Denver & Rio Grande, but lately we have not. We always try to give roads traffic and get some of their purchasing agents' business in that way, but we have sold the Rio Grande in the last two years a few small orders, but not much: we don't have the business that we used to have.

Q. Why is that?

A. Well, we don't give them any traffic.

Q. You spoke in response to something asked you by Mr. Cotton about some new rates; what are the new rates?

A. To California points?

Q. Yes.

A. The tariff has not been published yet, but the notice was to the effect that the five dollar rate would be the minimum to any California point.

Q. When did you get that notice?
A. Oh, I think it was Wednesday.
Q. Wednesday?
A. Yes.
Q. From whom?
A. From R. B. Miller, the general freight agent.
Q. And is that on the same class that now pays $3.10?
778 A. The same thing, yes, sir. It is an advance from $3.10 to $5 as the basis.
Q. When is that to become effective?
A. The circular states the 15th of March, but the traffic officials state that it will not go into effect so soon as that.
Q. What traffic officials?
A. Mr. Miller and Mr. Coman.
Q. That is, Mr. Miller personally does not agree with Mr. Miller's circular?
A. Well, they found out that the time was too short to give shippers a chance to clean up business that was sold under the old rate. It would put a man out of business if they forced him to it.
Q. I see; so you don't know the exact date that that will go into effect?
A. I do not.
Q. Now when you ship material to these other roads in the east that you have mentioned as customers of yours, are you restricted in any way as to the kind of cars that you shall load for shipments?
A. No, only this way, that they want a car to go home the way it came out; for instance, if a car came out over the St. Paul they would want it to go back that way.
Q. You say you sell a good deal to the Chicago & Northwestern?
A. Yes.
Q. What kind of cars do you load?
A. Well, a car that came out over the St. Paul they would not want it to go back over the C. & N. W.
Q. Do you ever ship to the Northwestern and the Chicago, Milwaukee & St. Paul in Union Pacific and Southern Pacific cars?
A. Yes, frequently.
779 Q. How long since you quit selling to the Denver & Rio Grande?
A. Well, we sold them a little last year and a little the year before, just a little business at Denver; we have an office in Denver and our Denver people pick it up; it don't amount to much.
Q. What kind of cars do you ship their material in?
A. Well, we catch any kind of a car that comes west over the D. & R. G.
Q. Mr. Cotton asked you whether you had lost any business by reason of the rate adjustments; do you know of any that you have lost other than the traffic in ties to the Gould people aside from your California and Arizona business and Sacramento points east?

A. No, only this Rio Grande business; we used to have lots of that; we had both for the Rio Grande Western and the Denver & Rio Grande; but of late years we haven't had that.

Commissioner LANE. As I understand, they cut off the entire sales to the Western Pacific by the rate down there?

Mr. SEVERANCE. Yes; that is what I understood, that the rates were prohibitive from here to San Francisco Bay.

Mr. COTTON. Oh, no.

Commissioner LANE. Well, that is a discrimination in the tariff.

Mr. COTTON. Not San Francisco Bay.

Q. Bay points, I understood; let's have that understood; that is what I understood him to say; what did you say about it?

A. The tariff to Bay points reads rough green common lumber $3.10 a ton; then the tariff on railroad ties puts them
780 in with cross-arms and material of that kind; cross-arms, ties and so on, $5.00.

Q. Well, now, you said something on your direct examination with reference to the effect that had on you making sales to the Western Pacific?

A. Yes. They are wanting to buy ties delivered at Stockton, which is practically a Bay point, and it takes a $3.50 rate, but they can't get in there.

Commissioner LANE. Now is that the general classification of ties?

WITNESS. No; a tie should be classed under rough common green lumber. There is nothing any rougher or any more common than that.

Q. Well, what is greener?

A. And nothing greener.

Commissioner LANE. Is that a general classification that obtains over all the roads?

WITNESS. That is the only tariff I have ever seen that classification in. The tie is just as cheap a commodity as goes, and usually moves just the same as other lumber; and other roads shipping out on eastern shipments don't make any distinction between plain lumber and rough lumber; it goes so much a ton anyhow.

Commissioner LANE. Is that same distinction made in shipping from Portland east over the Short Line?

WITNESS. No, sir.

Commissioner LANE. It is only from here down to California.

WITNESS. From here to Bay points in California.

Commissioner LANE. From here to Bay points in Califor-
781 nia: what is the reason for that?

WITNESS. Well, they don't give any.

Q. Have you inquired?

A. Yes.

Q. From whom?

A. Why, from different ones of the traffic officials. The way we came to get on to the thing, in the first place we sold the Western

Pacific a big lot of ties supposing that a tie was rough green common lumber and shipped a great many thousand of them and got stuck for $2,200 on them.

Q. You discovered your definition was wrong, did you?

A. My definition was wrong, yes.

Q. When applied to Bay points?

A. Yes.

Q. And you went out of the Western Pacific traffic then on ties?

A. No; we have got to deliver them a lot more yet, but then we are trying to make them make a delivery to some other point; we are going to wait until they build their road to Marysville, and then deliver them there.

Q. Well, you are not making any further new contracts with the Western Pacific?

A. Not with the Western Pacific, no.

Q. That is all.

By Mr. Cotton:

Q. Do you know what they charge from Puget Sound to San Francisco Bay points on ties, what the freight rate is?

A. No, sir.

Q. By water?

A. I don't know a thing about Puget Sound rates.

Q. Don't you know that it is much higher than $5?

A. No, I don't know anything about charter rates from Puget Sound.

782 Q. You know there are steam schooners that are operating in connection with mills from Coos Bay?

A. No, I don't know that.

Q. Tillamook?

A. No.

Q. The mouth of the Columbia River?

A. Yes, I know that.

Q. Grays Harbor?

A. Yes.

Q. South Bend?

A. Yes.

Q. And Puget Sound?

A. Well, I am not familiar with conditions on the Sound.

Q. And they all go to San Francisco Bay points, don't they?

A. Why, there are steam schooners, I presume, operating out of these ports.

Q. Yes; and there is a tie supply at all these places?

A. Naturally, yes; wherever they make lumber they make ties.

Q. And you don't know what the rates are, whether they are higher or lower than the $5 rate—the rate these steam schooners make on common rough green lumber from Portland at the present time?

A. About nine dollars and a half.

Q. $9.50 a ton?

A. A thousand feet.

Q. A thousand feet?

A. Yes.

Q. How much is that a ton?

A. A thousand feet of lumber would weigh 3,300 pounds and that would be about——

Mr. SEVERANCE. About $5.00.

Q. About $5.70, wouldn't it?

A. $5.70, yes.

Q. Now that is on the common green lumber on which you pay $3.10?

A. Yes, sir.

Q. They charge $5.70 from Portland by the steam schooner?

A. Yes.

783 Q. And presumably the same or more on ties, or do you know?

A. It is the same rate on all classes of lumber.

Q. And how long has this $5.70 rate by steam schooner prevailed?

A. Just very recently charter rates have gone up. Most of the time the water rate is lower than the rail rate; it has been down as low as $4 a thousand feet when the rail rate was unchanged.

Q. The rail rate from Portland for a long time past has been how much?

A. $3.10 a ton.

Q. From Portland?

A. Oh, from Portland?

Q. Yes.

A. Oh, $5.00.

Q. $5.00; and how long has the $5 rate on green lumber and ties and everything from Portland prevailed?

A. I don't know.

Q. About how many years.

A. I don't know anything about that.

Q. Well, it has been a long time past, hasn't it?

A. Yes; it has been a great many years.

Q. And the Portland mills, therefore, on common green lumber have had to pay $5 and you pay $3.10?

A. Yes.

Q. But you get your lumber transported to the east and all points east for the same rate that the Portland mills pay?

A. Yes.

Q. And then you have had the advantage, therefore, of the difference between $5 and $3.10 on your common green stuff?

A. Yes.

Q. To California Bay points?

A. To California Bay points; that is, the Portland mills for years had a lower water rate than they have now; the water rate

784 was less than half as much as it is now.

Q. Yes; I know that.

A. But this condition now where the valley mills have an advantage over the Portland mills has only been of very recent date.

Q. But you have an advantage even on this $5 rate now of 70 cents, haven't you; that is, when they raise their rate in March?

A. Yes; but charters will all go down in the summer time, and when they go down in the summer time then we won't have any advantage.

Q. Yes; but we may have to put ours down.

A. Well, they are easier to put up than down, I have found.

Q. Well, we have found it harder to get them up than to put them down.

A. I don't know; they just send out a notice that they are going to raise them.

Q. We have given you a pretty good long time notice.

A. Mr. Lounsberry came up the other day and said: "We are going to raise the rates," and wanted to talk it over. I asked if he had made his mind up to change. He said yes. I said then there was nothing to talk about.

Q. He told you they were going into effect?

A. The other day we got a notice, and we got another notice we would not be permitted to ship anything south of Ashland, so the cleaning-up process would take a long time under those conditions.

Q. And does that condition exist now about shipping below Ashland?

A. It was still in yesterday.

Q. How long ago was this; how many days?

A. Several days ago, the first of the week.

785 Q. It hadn't been all the time—on and off during the car congestion in California?

A. It was mostly off.

Q. If you had been doing business and depending on shipments to Colorado, Idaho, Arizona and elsewhere, you would have turned your toes up pretty long ago, wouldn't you?

A. Well, we pretty nearly did. We got Mr. Stubbs out here and he restored the $3.10 rate and we got a new lease on life.

Q. I mean this last year, you would have had no cars at all practically?

A. Not since July.

Q. That is, from the south.

A. We have had practically no cars from the south since July.

Q. You could not get any at all?

A. Practically none.

Q. The empties were not coming back at all from San Francisco, were they?

A. No; you could not even get them for company material.

Q. You could not even get them for company material to the south?

Commissioner LANE. This embargo south of Ashland was due to the fact you could not get any cars?

WITNESS. No; it was the congestion of lines down there.

Commissioner LANE. Yes: they could not handle the business?

WITNESS. Could not handle the business.

Q. Cars could not be unloaded, you understood?

A. The cars could not be unloaded and every side-track was full.

Q. And they have been compelled to do that at various intervals from time to time during the summer in order to get a chance to clean up?

786 A. Yes. This last embargo was on account of fuel.

Q. But you have had an advantage and have for some months past, of the $3.10 rate on common green stuff which you ship south as against a higher rate from Portland?

A. Except ties.

Q. Except ties, and on ties you pay the same as the Portland rate.

A. The same as the Portland rate.

Q. And the proposal now is to make it all $5?

A. That would be the minimum, as I understand it.

Q. And that does not go into effect, they have just simply given you a preliminary notice that it may go into effect March 15th?

A. Well, the notice does not read that way.

Q. Well, but it tells you that it will—that is not a tariff; they haven't sent you a tariff yet, have they?

A. No.

Q. It is just a typewritten notice or printed notice?

A. A typewritten notice.

Q. A typewritten notice to give you warning that there may be a raise of these rates, so you may clean up your business accordingly; isn't that it?

A. Well, it says there will be a raise.

Q. Yes; that is all.

By Mr. SEVERANCE:

Q. One other question. Mr. Cotton was interrogating you with reference to water rates from Portland to San Francisco; do those rates vary frequently?

A. Oh, yes; water rates are up and down all the time; they are not fixed. They are higher now than I have ever known them

787 since I have paid any attention to them, and they have been down as low as four dollars on the Columbia River, four dollars a thousand feet. At the time the $3.10 rate was put in by Mr. Markham, the water rate then was about—the charterers varied; steam schooners were getting, I think, about $5.50 and sailers about $5.

Q. You mean $5.50 a ton or thousand feet?

A. No, thousand feet. Everything that goes by water goes by the thousand feet, and everything that goes by rail except mining timbers

goes by the ton, and this $3.10 rate was just a compromise so as to cover the water rate at that time.

Q. That is all.

By Mr. COTTON:

Q. When was that $3.10 rate put in and why was it made?

A. It was put in to let the Valley mills ship in to Bay points.

Q. When?

A. Well, it was when Markham was general freight agent here, I don't know just what year it was.

Q. That was about 1901, or prior?

A. Well, I think it was prior to 1901, but I would not say positively.

Q. And has been in ever since, hasn't it?

A. No, sir.

Q. It was taken out for a short period; how many months was that?

A. Well, I think it was out about six months, something like that.

Q. About six months, and raised to $5?

A. Yes.

Q. And then restored again?

A. Yes.

Q. Supposed to have been made in competition with the water movement from Portland, wasn't it?

788 A. That was the basis of the rate; when it was put in it was supposed to just equal the water rate at that time.

789 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by J. F. Meyer, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the City of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Meyer were on the stand giving the same testimony.

Mr. EVARTS. Yes.

J. F. MEYER

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Meyer, where do you live?

A. Portland.

Q. What is your business?

A. Car service agent for the O. R. & N. Company and the Southern Pacific Oregon line.

Q. How far south do the lines you speak of as the Oregon lines of the Southern Pacific run?

A. To Ashland.

Q. Just a little ways this side of the boundary, is it not?

A. Yes.

Q. Will you state in a general way what your duties are, Mr. Meyer?

A. General handling of equipments and movement of it.

Q. By handling of equipments you do not mean of course that you are the superintendent. You have not charge of trains, have you?

A. No, sir.

Q. But have you charge of the distribution of cars?

A. In a general way.

Q. Well, just what do you mean by a general way?

790 A. Well, we have chief dispatchers that distribute cars on their respective districts, and when they have not got equipments they call on me.

Q. How long have you occupied that position, Mr. Meyer?

A. On both lines?

Q. Yes.

A. Since July 1st, 1904.

Q. Prior to July 1, 1904, what was your position?

A. Car service agent of the O. R. & N. line.

Q. For how long a period had you occupied the position?

A. Ten years.

Q. Who was the car service agent of the Southern Pacific then?

A. I think it was Mr. Richards in San Francisco; I presume so.

Q. Why do you presume that; don't you know?

A. Well, that is right. He was there; superintendent of transportation was his title.

Q. He had charge then separately of handling the cars on the Southern Pacific as far north as Portland?

A. At that time, yes, sir.

Q. You assumed that additional duty on the 1st of July, 1904?

A. Yes, sir.

Q. What kind of an organization have you in your office; that is, how do you handle the business, in a general way?

A. I don't quite understand.

Q. What kind of records do you keep and what track do you keep of cars and what methods have you of distributing cars, and on whose requisition are they distributed?

791 A. We call on our connections for equipment. The records of the cars themselves are kept in the auditor's office. The movement of individual cars, etc., is kept in the auditor's office. In the general supply of equipment we call on our connections for them.

Q. What do you mean by connections?

A. Well, our connections like the Short Line, for instance.

Q. What other connection?

A. Well, our immediate connection; that would be the extent of it; the Northern Pacific or the Great Northern.

Q. You call on them for cars for what purpose?

A. For return loading to their line.

Q. Don't you send any of your equipment over other lines?

A. We do, yes, sir.

Q. Well, take a concrete example, take the mill of Mr. Kelly, who was on the stand just before lunch. He stated that he shipped a large amount of lumber to Southern California, Colorado and Utah points. What method or rule, if any, have you with reference to furnishing equipment to Mr. Kelly?

A. Conditions have a good deal to do with that.

Q. Well, explain. I want to get at the facts. You know better what to say than I do what to ask you.

A. Well, take it at that time we endeavored to fill orders of that kind, where they go East, with foreign equipment. At this time when we are short of cars for our own business we undertake to take care of that business with foreign cars and use our own cars for our own business.

Q. In doing that do you make any discrimination by reason of the lines that the traffic is routed over?

792 A. We say to shippers that a Milwaukee car, if the load is east of Council Bluffs, should go over the Milwaukee.

By Commissioner LANE:

Q. You say that whether the car comes in empty or loaded to you, do you?

A. That is the general rule. That is the rule, I believe, that is common in railroad law, and has been in effect all the time.

Q. Is not that general rule that the car should go back by the gateway that it came only when it comes to you empty?

A. In other words you mean to say that we can take a Milwaukee car that comes to us loaded and deliver it to the Great Northern?

Q. Yes.

A. That is right.

Q. If it comes to you empty, you are to send it back by the same gateway that it came?

A. That is the idea, yes, sir.

Q. Do you know whether you were the first to enforce that rule out here?

A. Which, returning the empty in that way?

Q. Yes, the rule that the car shall return by its own gateway.

A. No, I cannot say for that.

Q. What effect have you found in the management of this bureau that the pooling of your cars has had so far as the supply of your own line with equipment is concerned?

A. I think it has had a very decided effect to the advantage of the business. It makes freer movement of cars.

Q. How far does your jurisdiction extend?

A. It goes to Ashland, Oregon, on the South, on the Oregon line, and goes to Huntington on the East on the Navigation line.

Q. Who is your superior?

793 A. Mr. Buckley, general superintendent.

Q. Does he have general charge of all the equipment of all the associated lines?

A. He is general superintendent; I report to him on the same territory.

Q. Suppose that you have—I do not know that this is entirely within the scope of this inquiry, but I want to understand this system that you have here, because it has not been in effect elsewhere to the extent, nor is it perfected, I believe, as it has been on your system. When you find that you are in need of cars within your territory this side of Ashland, and that you have no cars yourself that you can draw in that territory, do you telegraph Mr. Buckley and he then draws cars, directs cars to be moved from some other part of the system to you?

A. No, sir.

Q. You do not follow that rule?

A. No, sir; I call on the immediate connection myself for cars.

Q. That is to say, you would call upon the Union Pacific, for instance?

A. No, I would call on the Oregon Short Line; that is our immediate connection.

Q. And supposing they have none, would they pass that word along to the Union Pacific?

A. I presume so.

Q. You do not have any superior officer directing the car service, who, as it were, keeps his eye on the equipment of the whole system, to whom you can report and through whom you can obtain diversion of cars from the Southern Pacific to California or from Omaha to Oregon, if it is necessary?

A. Not myself.

794 Q. You just simply make your demand upon your immediate connection?

A. Yes, sir.

By Mr. COTTON:

Q. But you do tell Mr. O'Brien, do you not, from time to time—the general manager—that you are not getting cars?

A. Yes, sir.

Q. And then Mr. O'Brien corresponds with whom?

A. Mr. O'Brien will correspond with either Mr. Bancroft of the Short Line, or Chicago.

Q. Who is at Chicago?

A. Mr. Kruchschnitt.

Q. And Mr. Kruchschnitt has jurisdiction over all the Harriman lines?

A. Yes, sir.

Q. Only he communicates generally, that is, when it is a general readjustment of the matter other than the connections, he does that through Mr. O'Brien?

A. Yes, sir.

Commissioner LANE. Well, now, to whom do you report the number of cars that you have upon your system? Supposing you have a surplus of empties in your division.

WITNESS. I generally confer with the general superintendent or the general manager on it.

By Mr. SEVERANCE:

Q. Of what line?

A. Of our own line, right here, Mr. O'Brien or Mr. Buckley.

Q. You do not get any cars from the Northern Pacific at Silver Bow?

A. No, sir.

Q. Do you send any other their line that way, Northern Pacific cars?

A. No.

Q. Is there any embargo placed against the Northern Pacific
795 at that point?

A. So far as we are concerned?

Q. Yes.

A. To go by Silver Bow?

Q. Yes.

A. We have never furnished any equipment to go that way. We have never furnished cars to go by Silver Bow.

Q. You never have?

A. No, sir.

Q. That is within the last two years?

A. At any time.

Q. There is not free interchange of cars between the Northern Pacific, the Great Northern and yourselves for through business, is there?

A. In what way?

Q. I mean this: that you do not permit your cars freely to go on Northern Pacific lines, nor their cars to come freely onto your lines?

A. We let our cars go to the Northern Pacific when we are in shape to, and have supplied equipment.

Mr. COTTON. How many cars does the Northern Pacific owe you at Portland today?

WITNESS. I could not say how many there is today. The last checks we had it was something like 800 to 1,000 cars.

Mr. COTTON. That you have furnished the Northern Pacific at Portland 800 to 1,000 cars more than they have returned to you?

WITNESS. Yes.

Commissioner LANE. Yes, the Northern Pacific has a surplus of foreign cars. Have you any demand for cars from Puget Sound to Portland?

WITNESS. We have some demand for cars between here and Tacoma.

Commissioner LANE. That is all, Mr. Severance.

796 Q. Do you furnish your own equipments for through routing to the East over the Northern Pacific?

A. You mean O. R. & N. cars?

Q. Yes, or Southern Pacific. Suppose commodities originating in the Willamette Valley, say a hop shipment that the shipper de-

sires to route to the East over the Northern Pacific from Portland. Do you furnish your own equipment in case the Northern Pacific is unable to send any car?

A. Not generally speaking, we do not.

Q. Do you furnish your own equipment when the car is routed East over the O. R. & N. and Union Pacific?

A. Yes, sir, we furnish our cars for that.

Q. Do you furnish your own equipment if the car is routed by way of the Gulf and Sunset Route?

A. All of these associated line cars you know move almost in any direction.

Q. That is, by the associated lines, you mean the Southern Pacific, the O. R. & N., the Short Line and the Union Pacific?

A. Yes, sir.

Q. Do you treat all of the equipment belonging to any one of those lines as though it belonged to a single system?

A. They are at home on any part of the associated lines; a Union Pacific car is at home on the O. R. & N.

Q. And they are at home on the Southern Pacific and on the Short Line?

A. I believe so, yes, sir.

Q. Do you place any restrictions upon the use of your equipment for movement over the Denver and Rio Grande from Ogden?

A. No, sir, not excepting as business demands. That is, in other words, if we have a congestion or are short of equip-
797 ment or cars we naturally load them for our own trade.

Q. What do you mean by your own trade?

A. In other words we try to equalize the delivery and interchange of cars at the different junction points.

By Commissioner LANE:

Q. Is not that an extremely dangerous line of policy for the originating road to follow out? The road upon which a great volume of traffic originates? You do not figure upon there being a perfect equipoise between eastern and western business?

A. No, we cannot get it down to an exact interchange, but we hold it pretty close. We try to direct the car movement, when the shortage of cars is on.

Q. There is more business that originates on these lines than eastern business comes in, is there not?

A. Yes, sir, our preponderance of tonnage is east-bound.

Q. Suppose that you followed out that rule of policy and deny a man a car, which goes off your line, unless you can get a car from a foreign line. Are you not hampering his business?

A. If they get the other car to take its place it is an even proposition.

Q. Then you get a perfect equality?

A. Yes, sir.

Q. But supposing you do not get a car?

A. We would soon run out of equipment over here to take care of our business.

Q. How can you get the car then, if you do not haul empties?

A. We always do haul empties.

Q. Then how many empties, or what is the proportion of empties that you would haul to the west for your east-bound business?

798 A. Our proportion of empties that we haul is pretty close on to twenty or thirty per cent.

Q. Are those largely foreign cars?

A. Well, they are largely foreign cars, yes, sir; a good many foreign cars.

Q. They must be nearly all foreign cars, I suppose, if they are destined for east-bound business beyond your own line?

A. Not necessarily. As I say, we use a good many associated line cars in east-bound through business.

Q. You let them go off your line freely excepting in times of congestion?

A. That is the idea, yes, sir.

Q. That is all.

By Mr. SEVERANCE:

Q. Now, Mr. Meyer, do you permit the movement of cars from the Willamette Valley to the east over the Rio Grande from Ogden as freely as you do over the Union Pacific from Ogden?

A. Will you repeat that, please?

Q. I asked you if you permitted the use of cars from the Willamette Valley region east on the Southern Pacific as freely when the shipper desires to route over the Rio Grande from Ogden as you do when he desires to route over the Union Pacific?

A. From the car standpoint, I do; that is, to the extent of cars that we get, you understand.

Q. I am not speaking of the cars you get. You have some cars of your own?

A. We have some few.

Q. The Southern Pacific has cars?

A. Yes, sir.

Q. And those cars are supposed to be used in the transportation of traffic, are they not?

A. Yes, sir.

799 Q. Do you use those cars in transporting traffic over the Union Pacific and the Southern Pacific, the Short Line and the Union Pacific?

A. Yes, sir.

Q. Do you use them as freely if the traffic is routed by the Rio Grande from Ogden?

A. We use them for Rio Grande business, yes, sir.

Q. Do you use them as freely as you do for Union Pacific business or do you try to get the Rio Grande to send in cars?

A. We try to get the Rio Grande to send in cars.

Q. So you do discriminate as between the Rio Grande and the Union Pacific in the use of Southern Pacific cars going east?

A. No; I would not say that.

Q. What do you mean by your answer?

A. I say that when we have a good supply of cars there are no restrictions on any associated line cars moving east over the Rio Grande.

Q. Suppose there is some shortage of cars; then do you impose a restriction on the Rio Grande when you do not on the Union Pacific?

A. I can not say that we do.

Q. Have you never done it?

A. No, I do not recall that we have ever done that.

Commissioner LANE. Your policy is to keep your cars at home on your own line and not let them get abroad?

WITNESS. Yes, that is the idea.

Commissioner LANE. And you treat the Union Pacific as your own line?

WITNESS. Yes, sir.

Commissioner LANE. And you treat the Denver and Rio
800 Grande as a foreigner?

WITNESS. Yes, sir.

Mr. COTTON. But, if the Union Pacific——

Mr. SEVERANCE. Mr. Cotton, can not we proceed a little more orderly, without the interruption?

Mr. COTTON. Yes, I think we can.

Q. Now, Mr. Meyer, I show you Meyer Exhibit 1. Did you issue that circular?

A. Yes, sir.

Mr. SEVERANCE. I offer that Meyer Exhibit 1 in evidence, which I will read into the record. This is headed:

"Oregon Railroad and Navigation Company, Southern Pacific Lines in Oregon. Car Service Department. O. R. & N. Circular No. 287, S. P. Company Circular No. 86.

PORTLAND, OREGON, *August 6, 1906.*

To dispatchers, agents, conductors:

Effective at once and until further notice, you will not permit any cars to load with D. & R. G., R. G. W., and Western Pacific Railway Company material shipments, also commercial lading, excepting cars that belong to those lines, or that route that way. We have taken up with them the necessity of furnishing cars for this business. This action becomes necessary because our own company material shipments, that is O. R. & N., O. S. L., U. P. and S. P., have not been billed promptly. It is desired that you explain this fully to all concerned in such a way that they can not take exceptions. Also that

we will not accept cars which are loaded for the above lines, excepting as indicated. If you are not certain as to the routing take
801 it up with this office, although a rate card should be on all foreign cars. Acknowledge receipt on enclosed card.

J. F. MEYER, *Car Service Agent.*"

Q. Mr. Meyer, do you think, having your recollection refreshed by that circular, that you made no distinction or discrimination, or have not made any, at any time, between D. & R. G. and Union Pacific?

A. I will say that when that circular was issued, it was issued through a misunderstanding.

Q. Who had the misunderstanding?

A. That was a misunderstanding.

Q. Between whom was the misunderstanding?

A. Well, in a general way, when I get out instructions of that kind, I confer with our general superintendent and other heads of departments, and issue these circulars. When this circular was issued, I found it was not the right thing, that it was a misunderstanding on my part in issuing it, the way I did issue it.

Q. With whom was the misunderstanding?

A. And I think that circular was recalled, a portion of it anyway, within a very few days after it was issued.

Q. Well, you said it was the result of a misunderstanding. A misunderstanding between you and whom?

A. With the general manager and general superintendent.

Q. What did you think the general manager had said to you, which it turned out he had not said to you? What did you understand he said to you to make you issue this circular?

A. The discussion generally came up on that proposition as it is in the circular, and I understand it that way; I understood
802 that was the kind of circular I should issue, but it seems after I did issue it, that it was wrong.

Q. That is, you understood Mr. O'Brien, did you, that that was the kind of circular you should issue?

A. Yes; or from Mr. Buckley, whoever it was that mentioned it. We were in conference together and having some discussion on the subject.

Q. And this circular was issued, was it, immediately after this conference?

A. Yes, sir; or soon after; I don't know whether it was issued immediately after.

Q. Is it usual or unusual for you to misunderstand your instructions, Mr. Meyer?

A. Well, it is a very unusual thing that I misunderstand anything of that kind.

Q. Is it not a fact that circular was withdrawn because of the protest of the Rio Grande people, and not because you had had a misunderstanding as to your instructions?

A. Not to my recollection.

Q. Are you sure of that?

A. Quite sure of it.

Mr. COTTON. You have all four of the circulars there, have you not?

Mr. SEVERANCE. Yes, sir; the originals of two, and copies of the other two.

Mr. COTTON. Let me look at the copies. [Examines the copies.] They are all right.

Q. I will show you Exhibit Meyer 2, Meyer 3, and Meyer 4, and ask you to state whether those are the supplements and the order canceling the first circular?

A. I think they are right.

803 Mr. SEVERANCE. These being identified, I will read them in evidence in their order. Exhibit 2 is headed the same as the other, Oregon Railroad and Navigation Company, Southern Pacific Lines in Oregon. Car-Service Department. O. R. & N. Circular No. 287, S. P. Company Circular No. 86.

PORTLAND, OREGON, *August 9, 1906.*

To dispatchers, agents, conductors:

Referring to the above circular, that portion prohibiting cars to load with commercial business via Rio Grande is hereby canceled. Commercial shipments may be taken care of the same as heretofore. Acknowledge receipt on inclosed card.

(Signed) J. F. MEYER, *Car-Service Agent.*

Exhibit 3 is headed the same as the other is and is dated

PORTLAND, OREGON, *August 15, 1906.*

To dispatchers, agents, conductors:

Instructions contained in above circular are hereby modified to the extent that only O. R. & N., O. S. L., U. P., and S. P., and other cars belonging to the Harriman line must not apply on shipments of R. G. W. and R. G. and Western Pacific Railway Company material shipments. Acknowledge receipt on inclosed card.

(Signed) J. F. MEYER, *Car-Service Agent.*

The last one, Meyer Exhibit 4, is dated the 29th of August, and is headed the same as the others. It is addressed

To dispatchers, agents, conductors:

Effective at once circular changes. O. R. & N. No. 287, S. P. No. 86, Supplement No. 1 and No. 2, hereby canceled. The matter
804 of furnishing cars to load with R. G. W., D. & R. G., and Western Pacific Railway Company material should be handled the same as prior to issue of above circular. Acknowledge receipt on enclosed card.

(Signed) J. F. MEYER, *Car-Service Agent.*

Q. From whom did you receive instructions to make the first modification of that order of yours?

A. I think I got that from the general manager.

Q. Mr. O'Brien?

A. Yes.

Q. From whom did you get instructions——

A. I want to add to that answer. I want to supplement it a little bit; that is my recollection. It may be that after the circular was issued—well, that is about the way of it as near as I can remember, that I got the instructions from the general manager or the general superintendent, I don't remember which one.

Q. From whom did you receive instructions pursuant to which you issued the second supplement?

A. I think the same source, and the further fact that we were a little bit easier on some equipment.

Q. From whom did you receive your instructions which resulted in canceling this circular, which you did under date of August 29?

A. Well, I cannot say positively, but the supply of cars was getting a little bit easier about that time.

Q. Now, Mr. Meyer, you said a little while ago that you issued that original circular under a misunder-standing. Was that misunderstanding removed by the general manager between the dates of the issue of the circular and the date of the first supplement?

A. I cannot say off-hand.

805 Q. Can you state now what that misunderstanding consisted in? What did you include in your first order that was put in there under a misunderstanding?

A. Commercial shipments.

Q. Commercial shipments?

A. Yes, sir.

Q. It was not necessary however to prohibit the loading of shipments of material to be used by the D. & R. G., R. G. W. and Western Pacific in any cars except the cars belonging to those lines, was it?

A. That was about the idea, but from the fact that we had taken up with the Rio Grande the necessity of furnishing cars for their company material shipments, we thought that so long as they wanted their material, it would be only right for them to furnish their equipment for it. We had a very heavy company material shipment of our own to take care of.

Q. Well, do you know anything about the Western Pacific, whether that is under construction or not?

Q. I understand so.

Q. You speak of it here in your circular; what was the nature of the material shipments that were to go down there that you desired to regulate by this order?

A. I suppose it was everything in the line of material required in the construction of a railroad in the way of ties and lumber.

Q. Do you know anything about the Denver & Rio Grande people coming up here and being here at the time and protesting against this discrimination?

A. No, sir.

Q. You never heard of that?

A. Only as hearsay.

Q. Well, I asked you if you knew anything about it. Did you hear of that from Mr. O'Brien?

806 A. I heard of Mr. Schlacks being out here.

Q. What is his position in the Rio Grande?

A. I believe he is general manager.

Q. He was here about this time, was he not?

A. I don't know whether it was at that time or later.

Q. Is it not a fact, sir, that because of the representations of Mr. Schlacks made here, either at the time or shortly after you issued that circular, that you withdrew?

A. No, I cannot say as to that.

Q. From what portion of the country here were material shipments moving forward for use on the Rio Grande and the Rio Grande Western and the Western Pacific?

A. I guess pretty much all those mills in this territory have orders in there. I cannot remember what mills it was moving from.

Q. Did you notify those mills that were selling material to the Rio Grande or the Western Pacific, before you issued this circular?

A. Before I issued the circular?

Q. Yes.

A. No, sir.

Q. Did you have any consultation with them to ascertain whether or not it would interfere with their business?

A. No, sir, I do not as a rule deal with the mills direct myself at all.

Q. Did anybody else at your instance have any consultation with those mills to find out whether they would be incommoded by this rule before it was issued?

A. Not that I remember.

Q. Did you give a preference in furnishing cars to material shipments for the four Harriman lines as against commercial

807 shipments?

A. No, sir, not excepting in cases where it is required—well, we do not: ordinarily speaking we do not.

Q. Did you hear the testimony of Mr. Kelly this morning in that regard?

A. Yes, sir.

Q. And it is your impression that Mr. Kelly is mistaken about that, is it?

A. No, sir, that part of it that he testified to, as to the car material shipments going to Chicago, we do give that preference: that is a little out of the ordinary of railroad material.

Q. But he testified as to other railroad material. You desire to say, do you, that commercial loading from these mills here has the same privileges and the same rates and the same service as you give to material that is going from the same mills for use by the Harriman lines, in their own construction?

A. Yes, sir, ordinarily we do.

Q. Is that always so.

A. Ordinarily, we do.

Q. That is not my question, what you ordinarily do; I asked you if it is always true?

A. Always, yes, sir.

Q. Your jurisdiction is over the Southern Pacific in Oregon. How do you distribute cars as between commercial loading on the Southern Pacific lines in Oregon and materials desired by the O. R. & N. or the Union Pacific; which gets the preference?

A. There is no preference, generally speaking.

Q. There are a good many times, are they not, when you are unable to furnish all the cars that are demanded?

A. Yes, sir, but they are supposed to take their turn, generally speaking; commercial orders take turns with railroad orders.

Q. Who puts in the railroad order?

808 A. It is all put in with the agent.

Q. Where?

A. The order for cars is placed with the agents.

Q. Suppose the Union Pacific has bought some materials to use in construction, out here at a mill in the Willamette Valley. With whom does the Union Pacific communicate with reference to cars?

A. Sometimes communicates with our office, but most of the time it is placed with the agent.

Q. You mean the local agent?

A. Yes, sir.

Q. You mean that the Union Pacific people in Omaha telegraph direct to the agent at such and such a place to get cars?

A. As a rule they have an inspector in this territory, and he places the order with the agent.

Q. And it is your understanding that in no case does the Union Pacific get any preference in the order in which they receive cars over any other customer of the mill?

A. Not now, no, sir, and it has not for some time.

Q. Well, how long ago?

A. Well, the general rule is that we do not do that, generally speaking.

Q. Do you know of instances where you have done it?

A. I can not recall any right now.

Q. Do you know, as a matter of fact, that you have at times given a preference to the railroad, and that they have received cars out of their order? Don't you know that is so, Mr. Meyer?

A. Only as it was on some rush shipments, some important shipment.

Q. Who decides whether the shipment is important? The mill owner or the railroad company?

A. We generally get that from the railroad company.

809 Q. Suppose the purchaser of commercial loading is putting up a big building somewhere; he might think that his shipment was important, might he not?

A. I presume so.

Q. But if in the judgment of the Union Pacific railroad its shipment was important it would take precedence, would it not?

A. Well, I think we give the commercial men as much benefit as we do the railroad company.

Q. I am not asking you about benefits. I am asking you whether as a matter of fact, if the railroad company announces that it has a shipment that is "important" as you put it, it does not get the cars in preference to the commercial loading as it was practically testified to this morning by Mr. Kelly?

A. We try to take care of the orders in their turn.

Commissioner LANE. You have no system of car apportionment here?

WITNESS. No, sir, only as the business demands it.

Commissioner LANE. How do you distribute your cars? According to the demands put in by shippers?

WITNESS. Yes, sir.

Commissioner LANE. You do not divide up your mills and manufacturing establishments, and give each one its proportion in turn?

WITNESS. We try to take care of the loads ordered in the order in which it is supposed they are received. Of course individual orders are not placed with me; the individual orders are placed with the agent.

Commissioner LANE. But you have no way in which you appraise the capacity of the mill by a certain number of cars

810 each week?

WITNESS. No, sir.

Q. Who places the orders ordinarily with the agent for the shipment out of the mills; that is, the commercial shipments?

A. Who places it with the agent?

Q. Yes.

A. I suppose the mill does.

Q. You have had a good deal of trouble this year with car shortage, have you not?

A. Yes, sir.

Q. But irrespective of that trouble you do not remember any case now excepting in the case of material for refrigerator cars, where the railroad company has been given any preference over commercial shipments?

A. No, sir.

Q. You do not remember any of them?

A. I do not remember any.

Q. Now, in this circular, Meyer Exhibit 1, you say the action becomes necessary because our own company material shipments—that is, the O. R. & N., O. S. L., U. P. and S. P. have not been filled promptly. Do I understand that you have no central authority over the distribution of these cars, except Mr. Kruttschnitt?

A. We take care of the local business out here. When it comes to a matter of not knowing what to do it is referred to the general superintendent or general manager and he in turn, I presume, refers it to Mr. Kruttschnitt.

Q. You have frequent conferences with the general superintendent, Mr. O'Brien, here about the matter of distribution, of course?

A. Yes.

Q. You have a set of printed rules applicable to the Harriman system cars, the handling of cars among the lines of the Harri-

811 man system?

A. Will you please repeat that?

Q. You know there are in existence among all the roads a regular set of car service rules; you are familiar with them?

A. Yes, sir, general car service rules.

Q. Now, have the officials of the various Harriman lines a set of rules governing the handling of the equipment of those lines?

A. Do you mean all the associated lines?

Q. What do you mean by the associated lines?

A. The Union Pacific, the Southern Pacific, O. R. & N., Oregon Short Line, and Sunset Lines.

Q. Have they printed rules?

A. No printed rules, no, sir.

Q. Have you no rules?

A. Not with this associated line equipment.

Q. But have you not any kind of organization, any printed or written or typewritten instructions that are general instructions, applicable to the handling of business?

A. No, sir.

Q. Then by associated lines you mean this, do you not, Mr. Meyer—if I am not right, correct me—that you as an official of the Southern Pacific and of the Oregon Railroad and Navigation Company, are instructed to treat all the cars of the Harriman system—that is, the Union Pacific, Oregon Short Line, Oregon Railroad and Navigation Company and Southern Pacific system—as though the whole of them together constituted one system; you treat them all as your own cars?

A. Yes, sir.

Q. As distinguished from the cars of outside lines?

A. Yes, sir.

812 Q. And you make no distinction in the handling of that equipment by reason of the fact that it may belong to one line or the other?

A. No, sir.

Q. That is all.

Examined by Mr. COTTON:

Q. Mr. Meyer, an associated line car is at home no matter what its initials may be, wherever it is on an associated line: is that it?

A. Yes, sir.

Q. Before that arrangement took place an O. R. & N. car was at home on the O. R. & N.?

A. Yes, sir.

Q. A Southern Pacific car on the Southern Pacific?

A. Yes, sir.

Q. A Short Line car on the Short Line, and a Union Pacific car on the Union Pacific?

A. Yes, sir.

Q. And the car service rules govern and regulate the movement of all these cars between the several associated lines?

A. Yes, sir.

Q. If you turned over an O. R. & N. car to the Southern Pacific before this arrangement took place, the Southern Pacific could not load that car for California, could it; they would have to return it to you at Portland?

A. Treat it as a foreign car, yes, sir.

Q. If you received a car from the Oregon Short Line at Huntington you could not turn it over—you could not use it on your own line except as a foreign car?

A. No, sir.

Q. And you could not turn it over to the Northern Pacific at Wallula, or the Great Northern at Spokane?

A. No, sir.

Q. Or to the Southern Pacific at Portland?

A. No, sir.

813 Q. But you can now?

A. Yes, sir.

Q. And the same of course is true of Union Pacific?

A. Yes, sir.

Q. Whenever you find an associated line car bearing any initial you treat it just exactly as they treat an O. R. & N. car?

A. Yes, sir.

Q. And you draw no distinction between the O. R. & N. and South-Pacific lines in Oregon?

A. No, sir.

Q. Referring to these circulars, the first one is dated August 6th. At that time do you know what rate the company was making, the O. R. & N. and Oregon Short Line, on D. & R. G. and Western Pacific Company material?

A. No, sir.

Q. You don't know what rate of charge they made?

A. You mean freight rate?

Q. Yes.

A. No, sir.

Q. Was that company material regarded and treated as commercial lading?

A. I think so.

Q. You refer here to D. & R. G. Company material, and also to commercial lading in your circular. August 6th you say: "Effective at once, and until further notice you will not permit any cars to load with D. & R. G., R. G. W. and Western Pacific Company material shipments," and also commercial lading, excepting in certain cases. Did the agent know the difference between commercial lading and D. & R. G. material?

A. Excepting as it would be classified or billed perhaps, or something of that kind.

Q. You do not know what freight rate was made on D. & R. G. Company material at that time, do you?

A. No, sir.

814 Commissioner LANE. Is that 1906?

Mr. COTTON. Yes.

Commissioner LANE. Have you a classification now for company material, D. & R. G. material?

Mr. COTTON. It was taken out on the 29th of August.

Commissioner LANE. You do not have any particular rate on company material as distinguished from any other material on a foreign line?

Mr. COTTON. We did have up to the 29th of August half a cent a ton a mile, was it not, Mr. Miller?

Mr. MILLER. Yes.

Commissioner LANE. You have not had it since?

Mr. COTTON. No, sir, and we have not got it now. Now, on August 9th, Mr. Meyer, your attention was called to the fact that your circular of August 6th was too broad and included commercial lading as well as D. & R. G. Company material?

A. Yes, sir.

Q. From some source, you have forgotten where, and you then issued that circular three days later?

A. Yes, sir.

Q. On the 15th of August, four days after, you issued this circular, and I will read it and ask you to tell me what it means:

"Instructions contained in the above circular are hereby modified to the extent that only O. R. & N., O. S. L., U. P. and S. P. and other cars belonging to the Harriman lines must not apply on shipments of R. G. W., D. & R. G. and Western Pacific Railway Company material shipments."

What did you mean by that? That you could use other

815 foreign cars?

A. That we would use other foreign cars on the return movement home.

Q. By that you meant that if you had a foreign car on your line, any foreign car, which loaded back to the D. & R. G., they could load it with D. & R. G. Company material?

A. Yes, sir.

Q. And it did not relate solely to D. & R. G. cars themselves?

A. No, sir.

Q. Now on the 29th of August you issued this circular:

"Effective at once, Circular O. R. & N. No. 287, Southern Pacific No. 86, Supplements 1 and 2 is hereby cancelled. The matter of furnishing cars to load with R. G. W., D. & R. G. and Western Pacific Company material should be handled the same as prior to the issuing of the above circular."

Do you know what freight rates that D. & R. G. W. commenced paying on that day?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. On the 29th of August you allowed D. & R. G. Company and D. & R. G. Western and Denver Pacific material to move in any kind of a car exactly the same as commercial shipments?

A. Yes, sir.

Q. Without any distinction of any kind, character or description?

A. Yes, sir.

Commissioner LANE. Was there a new tariff in effect that day respecting that material?

WITNESS. I do not know.

Q. Prior to the issuance of any of these circulars you had applied to D. & R. G. Company to send you empty cars to load with their company material?

A. Yes, sir.

816 Q. But they had not been able to furnish you the cars?

A. They could not furnish them.

Q. And you had furnished them at Ogden more cars than you had received from them?

A. Yes, sir.

Q. And they owed you cars?

A. Yes, sir. Our deliveries there were in excess of receipts.

Q. And these cars, which you had delivered to them had been largely loaded with their company material?

A. Yes, sir.

Q. And you thought it was about time for them to hustle up a few cars of their own?

A. Yes, sir.

Q. And for the purpose of bringing about that result you issued these circulars?

A. That is it.

Q. You keep an account. If you should load cars here and not get any empties from the East, about how long would this road operate, taking the ordinary quota of cars which is necessary to do its general business?

A. Well, we would operate about thirty days, probably.

Q. And at the end of that time you would not have a car on the road?

A. We would not have a car left on the Navigation line.

Q. Therefore, it is necessary for you to receive at all times empty cars?

A. Yes, sir.

Q. And you keep track at Huntington, do you not, of the number of empties which you receive from the Short Line, and the number of loads you deliver?

A. Yes, sir.

Q. And whenever they begin to owe you too many cars you call on them for cars, do you not?

A. That is right.

Q. You owe them quite a bunch of cars now, don't you?

A. Yes, sir.

817 Q. Of course this applies both ways; you keep track both of empties and loads?

A. Yes, sir.

Q. How many cars do you owe the Short Line at Huntington now?

A. Approximately perhaps 300 or 400.

Q. Do you keep track with the Northern Pacific?

A. Yes, sir.

Q. You deliver cars to the Northern Pacific at Portland?

A. Yes, sir.

Q. How many cars does the Northern Pacific owe you at Portland at the present time?

A. Approximately about 800.

Q. In other words, they have received 800 more cars from you than they have given back?

A. Yes, sir.

Q. How long a time is that for?

A. That is beginning about last March, February or March, and up to—I have not checked it up very lately, but up to the 15th of November, along in there.

Q. From February or March up to the present time they have gradually fallen behind in returning cars to you until they now owe you about 800?

A. Yes, sir.

Mr. SEVERANCE. Do you mean now, or the 15th of November?

WITNESS. The last checks I made was about that time.

Mr. SEVERANCE. So you do not know just what it is now?

Q. Do you know about what it is now?

A. I think it must stand pretty close to the same figure yet.

Q. They have not equalized very much?

A. No, sir.

Q. Do you deliver cars loaded to the Great Northern at Spokane?

A. We do.

Q. For delivery to Seattle?

A. In their own equipment at the present time.

818 Q. Do you receive cars from the Great Northern at Spokane connecting from the East?

A. Do we receive cars from the Great Northern?
Q. Yes.
A. We receive some cars.
Q. Loaded and empties both?
A. Only loaded.
Q. But you load back cars that way?
A. Yes, sir.
Commissioner LANE. Only their equipment?
WITNESS. Foreign cars that route that way also.
Commissioner LANE. Not your own?
WITNESS. Sometimes we let our own cars go to the Great Northern when we have a supply of them.
Q. You equalize there and keep track of course?
A. We aim to equalize at Spokane.
Q. In other words, there is a free interchange of cars except where somebody begins to get very much in your debt?
A. Yes, sir.
Q. Or when you get in debt to somebody else?
A. Yes, sir.
Q. And then, as gentlemen say, you try to square up a bit?
A. Yes, sir.
Q. That is what you mean by this occasional stopping of free interchange?
A. Yes, sir.

By Commissioner LANE:

Q. That has been going on for some months, has it?
A. Yes, sir.
Q. You have not given them any number of Union Pacific or associated line cars for a long time, have you?

A. We have tried for a long time to equalize the interchange
819 of cars; more particularly at this time when we are so short. In other words, we cannot send too many of the cars off the line, because we would not have any left for our own business.

Q. Do you know whether there is any rule by which you can compel the Northern Pacific or the Great Northern or any other line with which you connect to return cars to you? As a practical railroad man, what would be your suggestion on that point?
A. Well, I don't think that is hardly practicable. I believe in the pooling of equipment.
Q. You think it would be a good idea to extend the system that you have over all of the associated Southern Pacific lines, to the Great Northern and the Northern Pacific and all other lines?
A. I believe in the general pooling of all equipment; I believe that is the proper thing to do. In fact, there is an association started in Chicago now among some of the lines.
Q. Is there any method you have to suggest by which, except by the increase of per diem, that you could get these cars returned to you?

A. No, I do not know of any plan that would work it out.

Q. That is all.

By Mr. COTTON:

Q. Some question was asked you about Silver Bow. Is that in your jurisdiction?

A. No.

Q. Do you know what interchanage of equipment takes place between the Oregon Short Line and the Northern Pacific at Silver Bow?

A. I do not.

Q. But you interchange freely between Northern Pacific
820 here, do you not?

A. Yes, sir.

Q. That is all.

By Mr. SEVERANCE:

Q. You were asked about the reason for the issuance of these circulars and you stated it was because you were hard up for cars. During your administration have you been compelled to issue any similar circular as referring to other railroads; that is, material shipments of other lines than the D. & R. G. and allied lines?

A. We have instructions out now, not to load any of our cars to the Great Northern or the Northern Pacific.

Q. I am asking you if you had at any time prior to the issuance of this circular of the 6th of August ever issued such a circular with reference to the material shipments to any other railroad?

A. I cannot recall any now, but no doubt we have issued them from time to time.

Q. Have you any recollection of any such thing?

A. No, I cannot recall it now.

Q. Had you ever, prior to that time, or have you since, issued any circulars directing that commercial loadings should not be made where a car was routed over a certain line, unless it was made in the cars of that line?

A. Will you please repeat that?

Q. Have you ever issued any other circular like this one of August 6th prohibiting commercial loading where the cars were to route a certain way, otherwise than in cars of that line. For instance, here you won't allow commercial loadings over the D. & R. G. unless
821 they furnish D. & R. G. cars. Did you ever apply that rule to any other railroad?

A. We had a rule in effect of that kind here some number of years ago.

Q. Applying to what road?

A. With the Oregon Short Line, practically the same thing. A carload that came west over the Union Pacific, could not go over the D. & R. G. and vice versa. We were confined to equipment routed D. & R. G. for D. & R. G. loading.

Q. But that is not what this circular says. How long ago did you have that regulation?

A. That has been several years ago.

Q. Well, how long ago?

A. Oh, off-hand, perhaps five or six years ago.

Q. Wasn't it longer ago than that?

Mr. COTTON. Have you the circular in your office now, Mr. Meyer?

WITNESS. I don't know; I think perhaps I could find it, yes.

Q. Have you at any time, since 1900 or 1901, five or six years ago, or six or seven years ago, ever had any such rule in force?

A. Similar to that one?

Q. Yes, as applied to Union Pacific. You say you had one that applied to Union Pacific; have you had such a one in the last six or seven years?

A. Excepting as I said a minute ago.

Q. But, Mr. Meyer, you testified a moment ago that five or six years ago you issued similar instructions so that you would not furnish cars for Union Pacific shipments unless they were
822 U. P. cars or that routed that way, and the same as to the Rio Grande. Now are you sure about that, sir; have you done that within five or six years?

A. Well, it might be longer than that.

Q. Don't you know it was before the Union Pacific bought the Short Line that that was done?

A. That might be; I could not say offhand.

Q. That is all.

Mr. COTTON. Mr. Meyer, will you look and see if you can find that circular?

WITNESS. Yes.

Mr. COTTON. Prior to this pooling arrangement where every car was at home on the associated lines, did you ever issue wires or circulars or directions against the Short Line similar to this D. & R. G. circular?

WITNESS. I cannot recall it positively.

Mr. COTTON. Will you look and see?

WITNESS. Yes.

Mr. COTTON. That is all.

Mr. SEVERANCE. That is all.

823 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by R. H. Jenkins, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the City of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Jenkins were on the stand giving the same testimony.

Mr. EVARTS. Yes.

R. H. JENKINS

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live?

A. Portland.

Q. What is your business?

A. Chief clerk in the freight office of the Northern Pacific.

Q. How long have you occupied that position?

A. Since the 1st of September of last year, last September.

Q. Prior to that what was your business?

A. I was a year with the Northwestern Improvement Company.

Q. And prior to that?

A. Prior to that I was with the Harriman lines, the O. R. & N.

Q. What position did you fill with the Harriman lines?

A. Various positions. I was at one time freight solicitor for the Harriman lines, on the street, and I was again chief clerk in the general agent's office.

Q. When were you freight solicitor on the street?

A. From about 1898 up to about two years and a half ago, I think.

824 Q. Up to two years and a half ago, did the Southern Pacific and the O. R. & N. have separate solicitors out?

A. Yes, sir.

Q. Have they since that time?

A. No, sir; I think not.

Q. Which company did you work for when you were freight solicitor?

A. The O. R. & N. Co.

Q. What were the instructions or directions after 1901 as to the soliciting of traffic from the Atlantic seaboard and from the country west of the Atlantic seaboard, given to the agents of the O. R. & N. and the Southern Pacific?

A. As to what route they should move over, do you mean?

Q. Yes.

A. Well, the impression we gave was that it was desirable that Atlantic seaboard business should move by Sunset Route if possible. If not, handle it by Union Pacific.

Q. And as to shipments originating west of the Atlantic seaboard?

A. Those were to move by Union Pacific if we could get them that way.

Q. What change was made in the personnel of the soliciting agent at the time you say they ceased to have separate solicitors?

A. I came off the street and went into the office as chief clerk for Mr. Morse. Mr. McCusker went on the street when I went into the office.

Q. He went on the street for both lines, do you mean?

A. Yes, sir.

Q. When was it you went into the office, and McCusker commenced to solicit for both lines?

A. About two years last November. I think it was in the fall of the year, about November. I was in the office about a year
825 before I quit the O. R. & N. Company.

Q. Mr. Jenkins, it appears by some of the testimony here that the Ogden gateway was closed as to shipments by way of Sacramento. When was that?

A. I do not remember just the time. I should say along in 1902 somewhere.

Q. It was while you were still with the Southern Pacific or the O. R. & N. Company?

A. While I was still with the O. R. & N. Company; yes, sir.

Q. That is all.

Mr. Carter. That is all.

826 Mr. Severance. I now offer, pursuant to agreement, the testimony given by W. C. McBride, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. McBride were on the stand giving the same testimony.

Mr. Evarts. Yes.

W. C. McBRIDE,

testified:

Examined by Mr. Severance:

Q. Where do you live?

A. Portland.

Q. What is your business?

A. General agent for the D. & R. G.

Q. How long have you been employed by the D. & R. G.?

A. About ten or twelve years.

Q. What kind of business do you transact for your company at Portland?

A. The duties incidental to a general agent's business; the securing of freight and passenger traffic, etc.

Q. What kind of traffic do you work for here?

A. All classes of traffic, freight and passenger.

Q. Moving both ways?

A. Both ways.

Q. Can you give me an idea how the business of the D. & R. G. compares now with what it was prior to 1901 out of Portland and the Willamette Valley?

A. I could not give any percentages. I might illustrate it in other ways. Have you reference to figures?

827 Q. Yes, if you have any figures; if not give us percentages.

A. I can only from memory, illustrating it by taking two years.

Q. Go ahead.

A. In the year 1900 from the Willamette Valley we secured in round numbers 27,000 bales of hops, or the equivalent of 320 carloads, of which about 280 cars went by Sacramento and Ogden and about 40 cars came by Portland and the O. R. & N and Short Line. In the year 1902, or one year after the so-called consolidation, we secured less than 30 carloads of hops from the same territory.

Q. How did they move?

A. By the O. R. & N. and Oregon Short Line.

Q. How is your business now from the Willamette Valley?

A. Nothing to be compared with what it was in 1901 and prior.

Q. Is there any difference in the extent of the soliciting you did for business in 1900 and in 1902; that is, do you still solicit that territory?

A. Oh, certainly, yes sir.

Q. Any less actively than you did before?

A. No, sir, more so; or at least as much.

Q. It appears by your statement that the bulk of the traffic in hops that you secured at that time was routed over the Southern Pacific by Sacramento. Does any traffic go that way now from the Willamette Valley?

A. Not Sacramento and Ogden; no, sir; not to my knowledge.

Q. Where is the division line, if you know, on the Southern Pacific as to traffic moving to the east, if there is any division?

A. Ashland, if I understand.

Q. That is, from Ashland this way?

A. From Ashland north it moves via Portland.

828 Q. What is the distance from Ashland to Portland?

A. I think it is about 340 miles; but I am not positive.

Q. Do you know the distance from Portland by the Southern Pacific route to Ogden?

A. I should think it was in round numbers about 1350 miles; in that neighborhood.

Q. Do you know the distance by O. R. & N. and Short Line?

A. About 890 miles, or something in that neighborhood.

Q. You say that all traffic that originates north of Ashland goes by Portland?

A. Yes, sir.

Q. In what part of the Willamette Valley are the bulk of the hops raised, taking Salem as an example?

A. In the vicinity of Salem.

Q. And Salem is 90 miles from here?

A. Salem is 53 miles from Portland.

Q. And so that it appears the Southern Pacific Company secures 53 miles to Ogden instead of 1300 miles to Ogden, as formerly?

A. Yes, sir.

Q. Do you remember when the Ogden gateway was closed, and have you a circular about it?

A. To all intents and purposes it was closed in the early summer, if I recollect right, of 1902. It was closed permanently, however, locked, on September 1, 1902.

Q. Have you a circular with you?

A. I have a circular.

Q. Will you let me have it? Was this circular which you have handed me issued at that time?

A. I presume so, yes.

Q. That is the original of it?

A. Yes, sir; I took that from my file.

829 Q. From the files in your office?

A. Yes, sir.

Mr. SEVERANCE. I will read this into the record. It is headed:

SOUTHERN PACIFIC COMPANY,
(Oregon Lines),
TRAFFIC DEPARTMENT,
Portland, Ore., Sept. 1, 1902.

Circular No. F-48.

CLOSING OF SACRAMENTO-OGDEN ROUTE ON OREGON LINES BUSINESS.

To agents and others interested:

An understanding has been reached with Rio Grande lines to handle all business to and from points on the Oregon lines of this Company interchanged with Rio Grande Western Railway at Ogden via Portland and Huntington, and effective today, the Sacramento-Ogden route is closed for such business.

Joint tariffs of these companies issued, Nos. 33-U and 35-U, also Transcontinental Freight Bureau Tariff will be so amended, and on and after this date agents will not accept for shipment via Sacramento any business when routed via Ogden east in connection with the Union Pacific or Rio Grande Railways.

W. E. COMAN,
General Freight Agent.

Q. How is business of the Rio Grande affected otherwise than the hop business since 1901; I mean the business out of Portland?

A. In about the same ratio, east-bound business.

Q. Prior to 1901 did Rio Grande business solicited by your people here move over both the O. R. & N. and the Southern Pacific via Sacramento?

A. Yes, sir.

830 Q. Was there, or was there not, any competition between the Southern Pacific and the O. R. & N. to secure the business prior to 1901?

A. I was not here, Mr. Severance, prior to 1901, and I cannot speak as to that.

Q. You were not personally in charge?

A. I was not.

Q. When did you come here?

A. In August, 1902.

Q. Was your personal knowledge of those figures obtained from the records in your office?

A. Yes, sir.

Q. You keep a set of records in your office, do you?

A. Yes, sir.

Q. Of which you are the custodian; they are in your charge, are they?

A. Yes, sir.

Q. Do you solicit lumber shipments in the Willamette Valley?

A. Yes, sir.

Q. How is your lumber traffic now?

A. Very light from that territory.

Q. What makes your difficulty in getting traffic there now?

A. Adverse influence of the Harriman lines.

Q. Adverse influence, how exerted and by whom, representing the Harriman lines?

A. Agents; through local favors.

Q. What about the furnishing of cars to move traffic over your line, Mr. McBride?

A. At certain times they are restricted, but not often.

Q. Do you remember of the issuance of this circular on the 6th of August which I called Mr. Meyer's attention to?

A. Yes, sir.

Q. How soon after that was issued did you hear of it?

A. I heard of it right away, probably the same day or the day after; immediately.

831 Q. Was there any representative among the general officers of the D. & R. G. here at the time?

A. Not at the time the circular was issued.

Q. How soon afterwards?

A. The circular was issued on the 6th of August and our vice-president came here some time during the latter part of the month; I can't recall the date.

Q. Do you know of your own knowledge of any representations made by him to the O. R. & N. or Southern Pacific people with reference to that circular?

A. I have heard that the——

Q. Were you present at any interview?

A. No, sir.

Q. You keep track of the destination of traffic from its origin. Is that part of your business?

A. Such as moves to our line, yes.

Q. Have you a pretty fair knowledge of the movement of all traffic, the way it goes?

A. Oh, generally speaking.

Q. How are hops usually moved to the Atlantic seaboard?

A. Under normal conditions the bulk from the Valley I would say would go by Sunset.

Q. During what years have they moved by Sunset since you have been in Portland?

A. More or less every year; less this year than prior.

Q. This year how have they generally moved?

A. I believe the bulk, probably a large percentage of them, will go through Portland, and east by O. R. & N.

Q. Do you secure any traffic at Portland that comes in by boat from the Willamette Valley?

A. Yes, sir.

Q. What class of traffic?

A. Hops.

Q. What percentage of hops that you move come in here by boat?

832 A. Thus far this season the largest per cent, I should say 75 per cent as an estimate.

Q. To what point are those hops destined that you have shipped, or are now shipping, over that line? That is, I mean what territory?

A. Various points through the east. Recent shipments have been consigned to New York, and some to London.

Q. How do they, as a rule, move east after leaving your lines at Denver or Colorado Springs?

A. By the Rock Island; the application of rates over the Southern Pacific lines south of Portland apply east of Colorado common points via Union Pacific and Rock Island only.

Q. I think that is all.

Examined by Mr. Corrox:

Q. Mr. Schlacks was here about the first of September?

A. He was here the latter part of August, to the best of my recollection.

Q. By the latter part of August you mean about what day in the month?

A. Well, I could not say. Probably somewhere from the 18th to the 28th or 25th, in that neighborhood. I am not prepared to give the exact date he was here. He was here several days.

Q. You do not know exactly, but your impression is that it was after the 18th?

A. I would not say positively.

Q. It was certainly after the 9th?

A. It was while the circular was in effect on company material.

Q. But long after it had been taken out on commercial lading?

A. Yes, sir.

Q. There was no difficulty about getting it out on commer-
833 cial lading, was there?

A. No, sir.

Q. That you understood?

A. I understood that with Mr. Meyer.

Q. That was a pure mistake?

A. I didn't understand that that was a mistake.

Q. You didn't so understand?

A. I didn't understand that it was issued through an error; no, sir.

Q. Did you talk to anybody about it?

A. I talked to Mr. Meyer about it.

Q. You didn't talk to Mr. O'Brien?

A. No, sir.

Q. It was in for three days and then taken out?

A. Yes.

Q. But you were about the only person you knew of that talked about it?

A. I don't know of any one else excepting our purchasing agent; our special timber agent was here at the time looking after our company shipments.

Q. But he didn't get his end of it out, did he?

A. No, sir; it affected him more than the commercial end.

Q. You could get out the part that really affected you, the commercial loading, without any apparent difficulty, except bringing it to the attention of Mr. Meyer?

A. Of Mr. Meyer.

Commissioner LANE. Did they haul any empties for the D. & R. G. to take east-bound business?

WITNESS. Yes, sir; at certain times, when it was necessary. We have done it.

Q. Now in that connection, Mr. McBride, you have a record of the movement of stuff you have delivered to the Short Line at Ogden in the last year, have you not? That is, destined for this country?

A. Yes, sir.

834 Q. And, as a matter of fact, the D. & R. G. lines have delivered to the O. R. & N. during the last year 9,000 tons of freight?

A. I know the D. & R. G. does not deliver freight to the O. R. & N.

Q. But I mean freight that originated on, and was delivered by, the D. & R. G. to the Short Line?

A. Yes.

Q. And afterwards delivered by the Short Line to the O. R. & N. Of such freight there has been about 9,000 tons delivered to the O. R. & N?

A. I can't recall the number of tons.

Q. That is about it, isn't it?

A. I don't reduce it to tons in my figures.

Q. Pounds, carloads, anyway?

A. I could not say as to the amount. Your figures might not coincide with mine. I don't figure the tonnage.

Q. How do you figure?

A. I figure in carloads.

Q. Well, how many carloads; what deliveries in carloads have been made of that kind at Huntington to the O. R. & N?

A. For what length of time?

Q. During the year 1905.

A. I could not say, sir, offhand.

Q. Approximately.

A. I could not even approximate.

Q. Would you say that Mr. Miller's figures of 9,000 tons delivered to us by you, and 110,000 tons delivered by us to you were out of the way or not?

A. If they are taken from Mr. Miller's records I would say they were correct.

Q. I mean from your knowledge of the business.

A. The east-bound movement certainly is very much heavier than west-bound.

Q. From your knowledge of the business you would think about 10,000 tons one way and 110,000 tons the other way would be about the relationship, would you not?

835 A. I would not want to say until I checked it up; I could not.

Q. From your general knowledge of the business you would think it was about that, would you not?

A. I would say so.

Q. Did you furnish empties to us to equalize that shipment?

A. No, sir; our deliveries were to the Short Line. We furnished the Oregon Short Line a great many thousand tons.

Q. Yes; but those cars didn't come out here, did they?

A. They came to the Oregon Short Line.

Q. And the Short Line had to haul them out here empty in order to get your traffic, didn't they?

A. I don't know what the Short Line does with them. We turned them over a large number.

Q. Do you know what the interchange between your road and the Short Line is, as to the relative relationship of each?

A. I don't know in tons; no, sir.

Q. In carloads for 1905?

A. No, I do not. I don't keep track of the amount of tonnage moved into the Oregon Short Line's territory, but I know it is quite heavy on account of the coke in Montana.

Q. That coke moves in what class of cars?

A. As a rule in box cars.

Q. And that goes up to Butte, Montana, doesn't it?

A. To Anaconda and Butte.

Q. It doesn't go out on the Short Line west of Pocatello?

A. No, sir; but the cars are on the Short Line.

Q. About how far is it from Butte to Huntington?

A. 264 plus 326 miles.

Q. But you know, as a matter of fact, don't you, that under the car service rules the Short Line could not deliver those cars to us at
836 Huntington, but must return them to you at the point at which they received them?

A. I am not positive as to that, as to the relations between the Short Line and the D. & R. G. on that thing.

Q. You have a gateway open at the present time, have you not, via Huntington and Ogden?

A. Yes, sir.

Q. And that route is how much shorter than the route around by the way of Sacramento from Portland or the Willamette Valley?

A. Oh, it is probably 450 miles, roughly speaking.

Q. Is the train service on the Southern Pacific faster than that on the O. R. & N. and the Short Line?

A. No, sir; I would not think so. Do you refer to the freight service or passenger?

Q. Freight service.

A. You mean as between here and Ogden via the different roads?

Q. Yes.

A. I should think the O. R. & N. would be the shorter route and the service better.

Q. About how many days shorter would you think?

A. Probably two days under ordinary conditions, probably three.

Q. Are there any grades down there in the Siskiyou Mountains and over the Sierra Nevada Mountains on the Ogden route?

A. Yes, sir.

Q. And the other way it is practically a water level, with the exception of the Blue Mountains, isn't it?

A. Yes, sir.

Q. The rates are the same, are they not, as they are by the Sacramento gateway?

A. Yes, sir; to my knowledge.

Q. You still have joint rates?

A. Yes, sir.

Q. Through bills of lading and through loading?

A. Yes, sir.

837 Q. From Portland and points in the Willamette Valley?

A. Yes, sir.

Q. Would you say that this route via Ogden and Huntington is a better or worse route than the route via Sacramento?

A. I would say that it was a better route.

Q. And it has been open to you during all this period of time?

A. Yes, sir.

Q. And freely?

A. Yes, sir.

Q. For any business you could get out over it?

A. Yes, sir.

Commissioner LANE. You have not been embarrassed in getting business here by the difficulties of the Sacramento gateway?

A. Not particularly by the closing of the Sacramento gateway; no, sir.

Q. Have you been at all by the closing of the Sacramento gateway?

A. I would not say that we have been embarrassed by the closing of the Sacramento gateway, no, sir.

Q. Wherein, if at all, has your embarrassment existed in the movement of freight from Portland?

A. As I said, the attitude of the Southern Pacific.

Q. From Portland. I am taking it from Portland alone now.

A. I will say it was the influence of the O. R. & N.

Q. That is among the merchants and shippers here?

A. I am speaking of eastbound. You say the movement of freight from Portland.

Q. Well, movement of freight from Portland. The influence of the O. R. & N. on mill men and people of that kind, you think?

A. Yes, sir.

Q. And that is the same reason which you think prevails in
838 the Willamette Valley?

A. Yes, sir.

Q. But other than this adverse influence of rival agents, the transportation facilities which have been given you whenever you got the business have not been impaired or hampered in anyway whatsoever?

A. No, sir; after we have secured it, and it is in transit it moves freely.

Q. That is all, sir.

By Mr. SEVERANCE:

Q. Mr. McBride, the traffic originating in the Willamette Valley; the only one of the Harriman lines which comes in immediate touch with it is the Southern Pacific at the point of origin. That is right, is it?

A. Yes, sir.

Q. Do you have the assistance of the agents in the Willamette Valley to secure the routing of traffic over the Rio Grande east of Ogden?

A. The assistance?

Q. Yes.

A. No, sir.

Q. What is the attitude of the agents at the initial points in the Willamette Valley in that regard?

A. They look upon us as a competitor.

Q. To whom do the shippers in the Willamette Valley have to apply for their cars?

A. To the local station agent.

Q. Are those the same agents that look upon you as a competitor?

A. Yes, sir.

Q. Before the Southern Pacific and O. R. & N. were working together were the Southern Pacific agents in the Williamette Valley——

Mr. Cotton. Mr. McBride was not here then, Mr. Severance.

Q. Oh, you were not here then—what was your talk with
839 Mr. Meyer about this circular of August 6th? Mr. Cotton brought out the fact that you talked with him.

A. Why, if my recollection is right, I spoke to Mr. Meyer about it, and he said that in a day or two that would be withdrawn. So I was very glad of that, and that is about the extent of our conversation. He stated that they would withdraw it so far as commercial business was concerned right away, and he did; it was only in effect three days I believe.

Q. Was there anything said to you by him as to its having been put in through some misunderstanding?

A. No, sir.

Q. That is all.

840 Mr. Severance. I now offer, pursuant to agreement, the testimony given by R. D. Miller, a witness before the Interstate Commerce Commission, who testified on the 25th day of January, 1907, at the city of Portland, Oregon. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Miller were on the stand giving the same testimony.

Mr. Evarts. Yes.

R. D. MILLER

testified:

Examined by Mr. Severance.

Q. Where do you live?

A. Portland.

Q. What is your business?

A. Railroading.

Q. With what corporations are you affiliated?

A. Oregon Railroad and Navigation Company and Southern Pacific Company.

Q. And in what capacity?

A. As general freight agent.

Q. Of both roads?

A. General freight agent of the Navigation Company and general freight agent of the Southern Pacific lines in Oregon.

Q. What are the duties of a general freight agent?

A. On the lines of the Navigation Company the duties of general freight agent are to look after freight traffic.

Q. In what way look after it; solicit it, or have it solicited under him?

A. The business is solicited under his instruction. He
841 makes the rate and is generally responsible for the freight traffic conditions.

Q. That is, generally the duties of general freight agent on any line of road?

A. Yes, sir; I think so.

Q. That answer of yours is a general one?

A. Yes, sir.

Q. And it is the duty of a general freight agent, is it not, to secure all the business he can and get all the revenue he can for his road, so long as it is done in a proper manner?

A. I think so.

Q. You occupy that position on the O. R. & N.?

A. Yes, sir.

Q. And also on the Southern Pacific?

A. The Southern Pacific lines in Oregon.

Q. So that you owe to the O. R. & N. the duty of securing all the business and traffic you can for it, and to the Southern Pacific the duty of securing all the business and traffic you can for it?

A. Yes, sir.

Q. The long haul: is a long haul as a rule more profitable or less profitable to a railroad company than a short haul?

A. It would all depend upon the condition.

Q. What would you say, taking a shipment from here to Chicago; would it be more profitable to the Southern Pacific Railroad Company to share in that haul to the extent of 1,300 miles, or to the extent of 50 miles?

A. That would depend altogether on what it earned for the respective hauls.

Q. Well, come down to a concrete fact. Take a shipment from Salem, which I am told is 50 miles from Portland. What does the Southern Pacific get, what percentage of the through rate for bringing in a shipment from Salem destined for Chicago?

842 A. What kind of freight?

Q. Hops.

A. Carloads or less?

Q. Carloads.

A. The Southern Pacific would earn from Salem to Portland——

Q. What does it actually get; what is credited up to it by that kind of a shipment?

A. It would earn its local rates.

Q. How large is that, how much?

A. About 20 cents per 100 pounds.

Q. What is the through rate from Salem to Chicago?

A. $1.50 for carloads.

Q. In carload lots?

A. Yes, sir.

Q. So that the Southern Pacific Company secures on a shipment of hops to Chicago 20 cents out of $1.50?

A. Approximately 20 cents.

Q. What is the through rate on hops to New York City?

A. $1.50.

Q. Just the same as to Chicago?

A. Yes, sir.

Q. So that whether the shipment goes to Chicago or New York, if it comes by the Southern Pacific to Portland from Salem and then on to Chicago or New York the Southern Pacific's revenue consists of 20 cents per hundred, and the revenue of the lines east of Portland consists of $1.30?

A. Yes, sir.

Q. When those hops moved to Chicago by way of Sacramento route to Ogden, what proportion of the through rate did the Southern Pacific get?

A. Well, applying the $1.50 cent rate via Sacramento and Ogden to Chicago, when that route was open for the traffic in question,
843 the Southern Pacific would earn from Salem to Ogden approximately 60 cents per hundred.

Q. If the hops originated at Portland and were moved through to Chicago or New York by the Southern Pacific, what would the Southern Pacific Company get out of the through rate if they went by way of Sacramento and Ogden?

A. About 60 cents a hundred.

Q. A large amount of hops are shipped from Portland, assembled here and shipped out of Portland, are they not?

A. Yes, sir.

Q. Under whose instructions was the Sacramento route closed? I see the circular is signed by Mr. Coman, but who gave the orders to close it?

A. The circular was issued by Mr. Coman. I do not know who issued instructions to him to close it.

Q. What was your position at that time?

A. General freight agent of the O. R. & N. Co.

Q. Were you not a party to the negotiations that led to the closing of that route?

A. Yes, sir, I was.

Q. Between whom were the negotiations conducted?

A. As with Mr. Coman, I do not know.

Q. Well, with yourself?

A. The discussion in regard to the matter was participated in by myself—I am wrong about that. I don't know that I had any discussion with any one pertaining to closing the Sacramento route.

Q. You were at that time only an officer of the O. R. & N., were you?

A. Yes, sir.

Q. You must have hailed that order with delight which gave you all the business. Now don't you know from whence the order
844 proceeded?

A. I do not.

Q. You don't know whether that order was issued under the instructions of Mr. Stubbs?

A. I do not.

Q. You know nothing about it?

A. No, sir.

Q. And have never been told who directed that order?

A. I don't think I was ever told.

Q. Never have had any information on the subject?

A. Not as to who issued the order cancelling the route.

Q. You have no information—never have been told anything about it, except that Mr. Coman signed the order. Is that so, Mr. Miller?

A. I think probably that is true.

Q. You do?

A. I do not recollect who issued the instructions to close that route.

Q. Had you done anything toward getting it issued?

A. Had I done anything towards what?

Q. Had you aided in the movement to eliminate the Sacramento route in any way, and have all the traffic move by the O. R. & N.?

A. No. I was not responsible for it.

Q. That is not what I asked you. Did you do anything to secure the issuance of the order?

A. I did not.

Q. You had no conversation with any person in authority on the subject?

A. I don't recall any conversation that I had on that subject.

Q. Did you have any correspondence with any person on the subject?

A. I think not.

Q. Then so far as that particular matter was concerned, you had nothing to do with it, and knew nothing about it until it came out. Is that so?

A. As to that I don't recollect.

Q. That is one of the things you can't remember, is it,
845 whether you knew anything about that before it was issued?

A. Yes, sir, I don't recall the circumstances connected with that.

Q. You think the chances are that that came as a beautiful surprise to you, don't you, Mr. Miller, that increase in your business?

A. Well, prior to that time, prior to the issuance of that order, the traffic was influenced to move by the Portland route.

Q. By whom?

A. It was solicited by the representatives of the Union Pacific and the representatives of the Southern Pacific influenced so far as they could the movement of that business via Portland.

Q. Was it more profitable to the Southern Pacific to have the hop business go by the O. R. & N. rather than by Sacramento?

A. I think so.

Q. Take hops that originate in Portland, from which point you state a good many hops were shipped; is it more profitable to the Southern Pacific as a railroad company to have the O. R. & N. and its connections get all the revenue, or to have the Southern Pacific get 60 cents of the revenue for taking the stuff from Portland to Ogden?

A. The hops taken from Portland originate on Southern Pacific territory in Oregon, and are brought in there largely by the Southern Pacific Company.

Q. They are brought in also by boat?

A. To some extent.

Q. To quite a considerable extent, are they not?

A. No, I don't think so.

Q. Now consider yourself for a moment, Mr. Miller, not as an officer of the O. R. & N., but as an officer of the Southern
846 Pacific; just step over to the other end of the stage. In that case, as an officer solely of the Southern Pacific, do you say it is better for you to get no revenue out of hops that originate at Portland, or to get 60 cents out of the $1.50 rate to Chicago—speaking solely as a Southern Pacific man?

A. A very large part of the hops shipped from Portland had previously paid tribute to the Southern Pacific Company. Hops that might move from Willamette points to Portland that would not pay tribute to the Southern Pacific Company, it would, of course, be of advantage to the Southern Pacific Company to secure the hops to Portland that were brought to Portland by river, by boat.

Q. That is better for you than to get no revenue, of course?

A. Yes.

Q. Well, now move over to the other side of the stage, and take your position as general freight agent of the O. R. & N. It is much to the interest of the O. R. & N. to have those hops move that way rather than by the Sacramento route, isn't it?

A. Yes, sir.

Q. Because otherwise it would get no revenue.

A. Except as they received it on the river.

Q. Now which would you say was the better—the river rate is the same as the railroad rate into Portland, isn't it—the local rate?

A. Substantially the same, yes, sir.

Q. Now is it better for the O. R. & N. Co., do you think, to get the 60 cents for the through rate or the local rate for bringing the hops into Portland and having them sent thence over the Southern Pacific?
847 A. I think you will have to re-state that question.

Q. Which is more profitable for the O. R. & N: to get its proportion of the through rate of taking the hops from Portland on to Ogden or to take its local on the boat into Portland and let them go forward over the Southern Pacific; which would be more profitable?

A. I think it would be about a stand-off, as between the earnings on the river to Portland and the earnings of the Navigation Company from Portland to Huntington.

Q. That is, you don't think there would be any additional profit to either line in taking the hops forward, over and above the local into Portland. That is right, is it?

A. Well, no, I don't quite follow your question.

Q. I tried to make it clear. In either case you have a local into Portland. If they come in by O. R. & N. boat, we will say, the O. R. & N. gets that local. If they come in by rail the Southern Pacific gets the local. Now, whichever line ships them through to Ogden gets 60 cents, and the local rate in is 20 cents. Now, you say that that 20 cents includes in itself all the profits that there is in the 60-cent haul, so that it is just as well for either one of these roads to get the small local rate into Portland, and not participate in the through haul?

A. I don't think that question is put in a way that I can answer it.

Q. Oh, I think it is. I will put it again though, if you can't understand it.

A. No, I don't understand it.

Q. Well, take the situation as it existed here when the O. R. & N. ran boats up the river to Salem. They got 20 cents then for bringing hops down to Portland.

A. Approximately 20 cents.

848 Q. Well, whatever it was, and at Portland hops became competitive as between the O. R. & N. and the Southern Pacific. Now, if the Southern Pacific takes them they have to absorb that local, which leaves them 40 cents to haul them to Ogden. The O. R. & N. has to absorb it, or pay it, if they haul them, and they get 40 cents more. Now, if they come in over the Southern Pacific there is the expense of that local, leaving 40 cents more for moving them to Ogden. Now, do I understand you to say that that 20 cents includes, over and above the expense of handling, all the profits there is in the 60-cent haul, and that there is no profit in the 60 cents for the balance of the haul?

A. Oh, there is probably a profit in the balance of the haul for either line.

Q. Now we have that established. There is a profit then for either line hauling from Portland to Ogden after having absorbed this local of 20 cents. That being the case, how is it possible, Mr. Miller, for you as a general freight agent whose duties are to secure for his line all the business possible and all the revenue, to act at the same time for both the O. R. & N., who want to get this revenue, and for the Southern Pacific who wants to get it, or who ought to want to get it? Can you explain that?

A. Well, let us take this shipment you refer to from Salem to Chicago. I assume that the proportion received by the Southern Pacific Company from Salem to Portland for its haul of 53 miles

is just as compensatory under the conditions as would be its proportion of the through rate for the haul from Portland to Ogden via Sacramento.

849 Q. Now let us take the other side of it. Suppose the Southern Pacific brings it in here and the O. R. & N. Co. takes it forward.

A. That is the case I just referred to.

Q. Well, suppose the boats bring it into Portland, the boats of the O. R. & N., and the Southern Pacific takes it, the same rule applies?

A. In that case the O. R. & N. would earn this proportion of the through rate, which would be the local rate, and the Southern Pacific would earn the remainder.

Q. So that you think each are making something?

A. Yes, sir.

Q. But it is the duty of an officer of a railroad company, is it not, to make all the money he can for his company, irrespective of what other companies may do? Now can you explain to the Commissioner how it is possible for you, having a duty to the Southern Pacific to earn all the money you can for that company, and admitting that there is a profit in the through haul to Ogden, to perform at the same time a like service for the O. R. & N., which is competing for the same business? And that is not only applicable to you but to all officials who are joint officials of the two lines. Can you explain that?

A. Well, as I answered your question a few moments ago, I assume that the proportion of those through rates which are earned by the Southern Pacific Company to Portland for the shorter haul are just as remunerative, under all the circumstances and conditions, as would be its proportion of the same through rate from Portland to Ogden via Sacramento.

Q. Do you mean by that, Mr. Miller, that as much net
850 revenue will result to the Southern Pacific from the haul that it would have in here and getting the local 20 cents, as it would receive if it had the same shipment from Salem and brought it on to Ogden and earned the 60 cents?

A. That is what I am assuming, yes, sir.

Q. Well, is it so, do you believe that?

A. I am not in a position to state the fact.

Q. Do you believe that to be true?

A. I think so.

Commissioner LANE. Is that generally true of all?

WITNESS. Taking the run from Portland to Ashland, I think that is true.

Q. Is that usual in railroading, that all the money is made out of the short haul and no money made out of the long haul?

A. No, that is not true in all cases.

Q. That is only a rule that applies to the Southern Pacific.

A. I don't think so at all.

Q. Is it not a fact that the traffic man knows everywhere that the profit in the business consists in the long haul, so that you get revenue and only have the same terminal expenses as you have on the short haul?

A. It all depends on the conditions under which the freight is transported.

Commissioner LANE. Perhaps you have peculiarly remunerative rates in Oregon.

WITNESS. Possibly that is so.

Commissioner LANE. That short haul might be a better rate for you than the long haul, if you had a very large rate for your short haul.

WITNESS. Yes, sir.

851 Q. And the same rule works both ways; so that you think it would be better for the O. R. & N. to have the Southern Pacific take its profit on the long haul to Ogden; that is, you think the O. R. & N. could make more money if it could turn over the traffic at Portland and have it taken around by Ogden, by receiving its revenue on its little dinkey boat line from Salem to Portland.

A. The O. R. & N. Co. would lose whatever might be its profit for the haul from Portland to Huntington.

Q. Well, there is no profit in that, is there? The profit is all exhausted when it gets the boat haul into Portland, the same as in the case of the Southern Pacific.

A. No, the O. R. & N. is competing on the Willamette River with other companies who would carry it from Salem to the Southern Pacific if the O. R. & N. Co. did not; and it is better for the O. R. & N. Co. to secure the river haul to Portland for delivery to the Southern Pacific than to receive nothing at all.

Q. That is very interesting, but it has nothing to do with the question. Are not you bound from your argument to take the position that the profit has all been earned by this little haul into Portland?

A. No, sir.

Q. That is the position you take as to the Southern Pacific. You say there is no additional advantage to the Southern Pacific in getting that long haul to Ogden, don't you? Don't you claim that? Answer yes or no.

A. I can not answer yes or no without explaining.

Q. Say yes or no, and then explain.

Judge LOVETT. Answer the question in your own way, Mr. Miller.

A. I would say Yes, sir, but in referring to hops from Salem

852 to Portland, which is a short haul, I would add that hops originate a good deal farther south, where the revenue to Portland is several times as great as it is from Salem to Portland. The rates from Salem to Portland are relatively low because of water competition. From points south of Salem they are higher according to the distance. Now in answering your question as to the relative advantages in the movement via Portland and via Sacramento, to the

Southern Pacific, we must take into consideration the higher rates which the Southern Pacific Company earns from points south of Salem, from the Rogue River and other points in comparison with the rates from points nearer Portland where the rates are low.

Q. Take hops brought in here by this Independent River line, so that neither the Southern Pacific nor the Oregon Short Line (O. R. & N.) gets any revenue until the hops land in Portland. It is a fact, is it not, that the Graham Line brings in hops?

A. Yes, sir.

Q. Can you see any particular advantage to the Southern Pacific, taking yourself as an officer of the Southern Pacific alone; can you see any advantage to the Southern Pacific road in being excluded from that traffic and having it all forced over the O. R. & N.?

A. It is not all forced over the O. R. & N.

Q. As between the two it is all forced over the O. R. & N.

A. No, sir; it is not.

Q. I am talking about shipments that go by Ogden to the east. I will put this question so definitely that you will not misunderstand it. Take the case of hops that are brought into Portland
853 by this river line, not controlled by either one of the railroads; can you see any advantage to the Southern Pacific Railroad to have those hops move by rail east of Chicago over the O. R. & N. rather than the Southern Pacific?

A. The Southern Pacific would lose the earnings on the business.

Q. Is that any advantage to them? Are the earnings any advantage?

A. I think that is made up in other directions.

Q. But I ask you, would that be of any advantage?

A. I would answer that question in this way, that while the Southern Pacific Company might lose revenue on a very small or limited volume of business moving to Portland by boat, it would more than make up that loss in other directions as a result of the business moving from its rail points via Portland.

Q. That is a matter of opinion, isn't it?

A. That is a matter of what?

Q. Of opinion.

A. Very largely a matter of opinion.

Q. But that is an opinion you would not hold if you did not occupy this dual position, is it not? You would try to get all the business you could of every kind for the Southern Pacific, wouldn't you?

A. I think I would hold the same position if I was other than a joint officer.

Q. You think that would not make any difference; when it comes to a matter of opinion your opinion would be just the same.

A. I think it would be just the same.

Q. But your actions would not be the same; you would try to get that business, wouldn't you? If you were competing against

the O. R. & N. and the business was going to move by way of Ogden and you were representing the Southern Pacific line you would go after that business and get it if you could, would you not?

854 A. Not necessarily.

Q. You would not?

A. No, sir.

Q. If you were interested only in getting traffic for the Southern Pacific, would you?

A. I would, provided there were no other conditions to consider.

Q. For a good many years, Mr. Miller, traffic did move that way when they were separate lines and separate officers with the Southern Pacific and the O. R. & N., didn't it?

A. Yes, sir.

Q. And at that time there were not any special conditions that you know of that prevented the Southern Pacific from wanting to get all the business it could, were there?

A. No, I think not.

Q. And in those days if you had been an officer of the Southern Pacific you would have been pretty hot after that business?

A. Yes, sir, provided——

Q. Yes, provided you were not also an officer of the O. R. & N.?

A. No, sir, provided the arrangement for the interchange of traffic with the Navigation Company at Portland was different from what it is to-day.

Q. Well, it is pretty easy——

Commissioner LANE. What does that mean, sir? What is the arrangement?

WITNESS. The arrangement between the Southern Pacific Company and the Navigation Company, and the Short Line and Union Pacific companies on traffic moving via Portland is that the Southern Pacific shall receive for its haul to Portland, or from Portland

855 on traffic other than lumber when destined to eastern points, 40 per cent of the west of the Missouri proportion of the through rate subject to its local rate as its maximum.

Q. Who made that arrangement?

A. I think that arrangement was made by Mr. Sproule, who is the freight traffic manager of the Southern Pacific at San Francisco.

Q. Who was acting for the O. R. & N. in making that arrangement?

A. Mr. Campbell was traffic manager at that time.

Q. And they were both of them acting under the orders of Mr. Stubbs?

A. Yes, sir; I think they both reported to Mr. Stubbs at that time.

Q. Then, as a matter of fact, Mr. Stubbs held one railroad in one hand and the other in the other, his hands being represented by Mr. Campbell in the one case and by Mr. Sproule in the other, and Mr. Stubbs agreed with Mr. Stubbs on that division; is that true?

A. You will have to ask Mr. Stubbs about that.

Q. And I have no doubt Mr. Stubbs, who is a very charming and able gentleman, thought he was doing the best thing he could for both companies.

A. I am satisfied that Mr. Stubbs——

Q. Forgetting that they had been at times two railroads.

A. I am satisfied Mr. Stubbs felt that way, if he had anything to do with it.

Q. Have there been any other negotiations carried on in that same way between the O. R. & N. and the Southern Pacific with reference to divisions?

A. The statement I made covers everything I made except lumber and its products.

856 Q. One other thing I forgot to ask you. Were there not some other people concerned in that negotiation other than Campbell on one hand and Sproule on the other? Didn't the poor Union Pacific and the Oregon Short Line have any representatives?

A. I don't know whether the Short Line and the Union Pacific were represented at any conference between Mr. Campbell and Mr. Sproule when those divisions were fixed or not.

Q. You say this was a division of the through rate to the Missouri River. The Union Pacific and the Oregon Short Line make up a part of that through line, don't they?

A. Yes, sir.

Q. But Mr. Campbell was only an officer of the Oregon Railroad & Navigation Co., was he?

A. That is correct.

Q. And Mr. Sproule of the Southern Pacific?

A. That is true.

Q. Did these gentlemen assume to divide up that through rate without any representation of the Union Pacific, which has a thousand miles to Ogden, and the Short Line which has several hundred miles to Huntington?

A. I do not know what they assumed; I had nothing to do with fixing the divisions.

Q. As a matter of fact, that division was made by Mr. Stubbs, was it not?

A. I do not know whom it was made by, other than I assume it was made by Mr. Campbell and Mr. Sproule.

Q. You assumed that the Union Pacific and the Short Line have nothing to say about it.

A. I do not assume anything about it at all.

Q. Who represented those roads then?

A. I do not know.

857 Q. You never heard of anybody except Campbell and Sproule figuring on it?

A. I never heard them figuring about it.

Q. How did you find out that they made the division?

A. Mr. Campbell informed me of the divisions.

Q. Did Mr. Campbell tell you that he and Sproule made it?

A. No, I do not think he did, although he may have done so. I was assistant general freight agent of the O. R. & N. Co. at that time, and issued the division sheets in accordance with the instructions which I received from Mr. Campbell.

Q. What are the divisions on lumber and its products?

A. As I recollect, on lumber the Southern Pacific received south of Portland 25 percent of the west of Missouri River proportion of the through rate subject to its local rates as a maximum on traffic.

Q. Would not get as big a percent on that?

A. No, because it is a lower grade of business.

Q. Who made that deal?

A. That was made at the same time as the arrangement on the other traffic.

Q. The Union Pacific and Short Line did not figure in those negotiations so far as you know?

A. I do not know whether they did or not.

Q. That includes all the traffic, does it? These two percentages cover all the traffic originating on the Southern Pacific and moved to the east over the Union Pacific, Short Line and Navigation Company lines.

A. I think so; that is, to the Missouri River and beyond.

Q. It is a division on the rate to the river?

A. Yes.

Q. When were those deals entered into? When was that
858 division made?

A. I think it was in 1902, possibly the latter part of 1901.

Q. It appears by the testimony, Mr. Miller, that a good many hops have been shipped to the seaboard by the Sunset Route.

A. Yes, sir.

Q. Do you have a pretty hard struggle between that route and the Oregon Railroad & Navigation Company and its eastern connections for that business?

A. That business for the Atlantic seaboard is divided about equally, as between the Sunset Gulf Route and the routes via Portland.

Q. Who makes that division?

A. The shippers.

Q. The shippers?

A. Yes, sir.

Q. That is, half the shippers want to route it one way and half the other way?

A. Yes, sir.

Q. Did you hear some of those shippers testify that you had refused at times to take it one way or the other?

A. Yes, sir.

Q. Is that so?

A. Yes, sir, depending upon the car supply and when we could furnish equipment.

Q. Is it not a matter of fact that you move that stuff forward about as you please, and you decide which way to move it, when you

say which way you can do it most comfortably and easily on account of the car supply?

A. No, I do not think that statement is altogether correct.

Q. Is not that a fairly accurate statement?

A. No, I do not think it is.

Q. How far off is it?

A. Well, the hop business for the Atlantic seaboard and for
859 Europe is solicited for the Sunset Gulf Route. Failing in our efforts to secure that business for the Sunset Gulf Route, then we undertake to secure it for the Union Pacific Route via Portland. Out of the business that moves to and via the Atlantic seaboard about 50 per cent is secured for the Sunset Gulf Route and about 50 per cent moves via Portland.

Q. You say it is solicited. You mean that you have men out soliciting the business, do you?

A. We have men out and our local agents solicit the business.

Q. But they endeavor to send it via the Sunset Gulf Route.

A. For the Atlantic seaboard.

Q. And as an officer of the O. R. & N., leaving out your position now as general freight agent of the Southern Pacific, you regard that as a very good thing for the O. R. & N., to have the Sunset Route get the business, don't you? You prefer to have it go that way, as an O. R. & N. man?

A. The seaboard business via the Sunset Route, and all the other business—business for all other territories—moves via Portland; yes, I think it is a good thing for the O. R. & N. Co.

Q. You think that is a good thing for the O. R. & N. Co.?

A. Yes, sir.

Q. That is, you prefer to have the O. R. & N. excluded from any share of the business through to the seaboard. You think as an O. R. & N. traffic man that that is a good thing for them to get no revenue out of the business to the seaboard?

A. Provided all the other business for the other territory moved via Portland.

860 Q. And so you gentlemen have parcelled out the business of the country, have you, in that way; instead of competing for the business, you decide to have all the seaboard business if possible go by Sunset, and the other way by Union Pacific?

A. Yes, sir.

Q. Is that right?

A. We solicit and endeavor to influence the movement of seaboard business via Sunset, and business for other territories via Portland.

Q. Then there is no very hot competition here between Sunset Route or Southern Pacific on the one hand and the O. R. & N. on the other as to the routing of competitive traffic, is there?

A. The conditions are highly competitive.

Q. I mean as between those two companies. Do you mean that they are highly competitive when you are acting for both of them?

A. No; there are other competitors in the field.

Q. I understand there are, and we are very thankful for that; but as between these two roads for both of which you are acting there is no competition, is there, Mr. Miller? You try to throw the business to one section one way, and to the other section the other way?

A. There is competition in this sense, that all that business can move by either route, and it remains with the shipper as to whether he shall consign it by one line or the other.

Q. But, as you said a while ago, your agents and solicitors try to get it to go one way or the other.

A. But we are not always successful in having it move the way we want it to.

Q. You control it to the best of your ability?

861 A. We endeavor to control.

Q. So that on business to the seaboard there is absolutely no competition between the Oregon Railroad & Navigation Company on the one hand and the Southern Pacific on the other.

A. Except in the sense I spoke of.

Q. Well, that is not competition, is it? The Oregon Railroad & Navigation Company stands back and lets the Southern Pacific get it if it can, and if it cannot get it, then it tries to get it away from the other line.

A. I think that statement is true.

Q. And the reverse is the case as to all interior business.

A. Yes, sir.

Q. That is all, Mr. Miller.

Examined by Mr. COTTON:

Q. In years gone by which way did the hops move to the Atlantic seaboard; via Sunset or Union Pacific?

A. They moved both ways.

Q. Largely by what route?

A. By the Sunset Route.

Q. That route is controlled by the Southern Pacific all the way to the Atlantic seaboard, is it not?

A. Yes, sir.

Q. Any revenue accruing as the result of those shipments all goes to the Southern Pacific?

A. Yes, sir; 100 per cent of it as I understand it.

Q. Does it take a greater or less percentage now of the business than it did before?

A. I think there must be very little difference between what the Sunset Route is handling now and what it did prior to this year.

Q. And that is true even with the adverse car conditions

862 on the Sunset?

A. The adverse car conditions have had something to do with it. Much of the business that would have moved via Sunset has moved via Portland because of the car situation.

Q. But prior to this year, and the car shortage conditions existing this year, how did the business go; via Sunset or Union Pacific?

A. A great deal of it went via Sunset; some of it went via Portland and the Union Pacific; and in fact other lines via Portland.

Q. The proportion of movement has been changed materially from what it was prior to 1901, or has remained about the same?

A. I think perhaps the movement via Portland—the percentage to the seaboard via Portland, has been somewhat in excess of previous years, but due to those causes, the car conditions.

Q. I am excluding this year and the car shortage cutting out this year, and then I am going back and taking the years of 1895, 1894, 1893 (1905–1904–1903?) and comparing them with years prior to that.

A. Substantially the same.

Q. Are both routes free to shippers?

A. Yes, sir.

Q. What efforts do you put forth to retard the movement either way?

A. We do not retard it either way.

Q. Don't you try to force the shipper by failing to give him cars, or hampering his facilities and to divert that business from the route which you do not favor to the one which you do favor?

A. We do not.

Q. And if a shipper should express a desire to one way or the other, would you accommodate him or not?

A. We would.

Q. You have some connections at Denver?

A. Yes, sir.

Q. And you have some connections at the Missouri River?

863 A. Yes, sir.

Q. Are they represented in this territory by traveling men?

A. They are.

Q. And they are trying to pull the freight over what route?

A. By the Portland route.

Q. And the Great Northern tries to take it by what gateway?

A. Via Portland.

Q. And what gateway to the north?

A. Spokane.

Q. And the other roads?

A. Via Portland.

Q. And what other gateway towards the east?

A. Via the Northern Pacific and the Rio Grande lines.

Q. The Northern Pacific goes out by what gateway? Wallula?

A. It goes out by Tacoma.

Q. You have no through rates via Wallula with the Northern?

A. I think so.

Q. You have with the Great Northern via Spokane.

A. No through rates at the present time to points north and south from Portland, but some traffic moves to Portland on the application of local rates.

Q. There are how many agents in this country soliciting business by way of the Huntington gateway and representing what roads?

That is, over whom you have no control of any kind, character, or description?

A. The Rio Grande lines, the Chicago, Rock Island & Pacific, the Burlington, the Northwestern, the Milwaukee, the Illinois Central, the Chicago-Great Western.

Q. Are they all represented here in towns?

A. Yes, sir.

Q. Residing here in Portland?

A. Yes, sir.

Q. Having offices here?

A. Yes, sir.

864 Q. Trying to attract as much attention to themselves and their roads as they can?

A. Yes.

Q. Working the Willamette Valley?

A. Yes, sir.

Q. As far south as where?

A. Ashland.

Q. For all classes of business?

A. Yes, sir.

Q. All connections of yours?

A. Yes, sir.

Q. All contributing business to the Union Pacific line at Omaha?

A. Yes, sir.

Q. Are you anxious to please or displease those gentlemen by giving them the best facilities you can for their business?

A. We are very anxious to please those gentlemen.

Q. If they secure any business in the Willamette Valley, which way does it go out?

A. It goes out over their line.

Q. And by what gateway?

A. Via Portland.

Q. And Huntington in the case of these other roads?

A. Yes, sir.

Q. Do you interfere with their getting the business or attempt to retard their efforts in that direction to any extent whatsoever?

A. We do not.

Q. When merchandise and shipments going in the direction of Chicago were undertaken to be pulled south by the way of Sacramento, or the Sunset Route and over the D. & R. G. and the Rio Grande Western, then these agents were not so active in soliciting it, were they? And it went over the Sunset Route?

A. That is true.

Q. They are really rivals to the Sunset Route, are they not?

A. They are competitors of the Sunset Route.

Q. And they are trying to get the business to move via

865 Huntington?

A. Yes, sir.

Q. And this year most of it has moved that way, has it not?

A. Well, I don't know; I think probably the most of it has moved via Portland this year.

Q. You spoke about this division of 40 per cent with the local as a maximum to the Southern Pacific. That applied to what classes of commodity?

A. That applies to everything except lumber and its products.

Q. Both east and west?

A. Yes, sir.

Q. What are the locals down here in the Willamette to Ashland on first-class?

A. Our first-class rate from here to Ashland is about $1.40 or $1.50 or $1.60 per hundred.

Q. What are the other class rates; can you mention them?

A. If the first-class rate was $1.50, and that is approximately correct from here to Ashland, the second-class would be about $1.35; third-class would be about $1.10; fourth-class about 90 cents; and fifth-class about 70 or 75 cents.

Q. What are the rates to Albany?

A. First-class rates from Portland to Albany I think are 40 or 50 cents a hundred.

Q. Do you know what the divisions were prior to this 40 per cent division?

A. Yes.

Q. What was the division?

A. The division at that time on merchandise traffic other than lumber was 30 per cent of west of Missouri River proportion.

Q. With the local as a maximum?

A. With the local as a maximum.

866 Q. You have stated I believe that on all of this business, taking it up one side and down the other, 40 per cent would be better than the proportion of the rate which the Southern Pacific would receive if the stuff went to Ogden via Sacramento. What are the conditions which enter into your estimate in that regard?

A. The movement via Sacramento Route entails the lifting of the freight over the Siskiyou Mountains, and over the Sierra Nevada Range. It necessitates hauling all empties north to a greater or less extent. It involves a more costly service and a longer route.

Q. How much longer is the route via Sacramento than it is via Huntington?

A. From Portland to Ogden it is about six or seven hundred miles farther by Sacramento.

Q. How far is it from here to Sacramento?

A. It is 682 miles.

Q. How far is it from Sacramento to Ogden?

A. About 800 miles.

Mr. STUBBS. Call it 700 miles.

Q. That makes how many miles that way?

A. That is 682 plus 700 would be 1382 miles. The difference from Portland to Ogden via Huntington is 885 miles.

Q. It is about 500 miles further the other way?

A. Yes, sir.

Q. What is the character of the pull down here in the Valley; that is pretty hilly, isn't it, up and down and over the mountains?

A. No, that is a very good route; it is down grade to Portland.

Q. A cheap haul, isn't it?

A. Yes, sir.

Q. You have an increase of 10 per cent; that is, the South-
867 ern Pacific did as allowing the freight to come this way?

A. Yes.

Q. That is, over the old rates. Now, these old rates had prevailed how many years—that old division?

A. Oh, a great many years. I think those were the percentages when the through rates via Portland were originally established?

Q. It would look very much as if Mr. Stubbs had made a very good trade for the Southern Pacific, wouldn't it?

A. I think he made a very good trade for the Southern Pacific.

Q. That is, assuming that Mr. Sproule did not really represent the Southern Pacific and that Mr. Campbell did not really represent the Union Pacific.

A. Yes, sir.

Q. Did the O. R. & N. receive some benefits as the result of this?

A. It did, very material benefits.

Q. What were the benefits?

A. Additional traffic.

Q. The O. R. & N. got additional business by way of the Huntington gateway?

A. Yes.

Q. Did they receive any additional benefit as the result of having all of these east of Omaha agents routing for the line?

A. They did.

Q. Did you have other competitors there in the way of Northern Pacific and Great Northern, who have now practically ceased in engaging in that business?

A. We did; the Northern Pacific have not ceased engaging in the business however.

Q. I mean are they getting much out of it?

A. No, they are not getting a great deal of it.

Q. Do you know about what percentage of business the
868 Sacramento Route ever took from the Willamette Valley and Portland, or do you know?

A. I do not know, but it was a very small proportion.

Q. You are still engaged in business with the D. & R. G; that gateway is open via Huntington, is it not?

A. Yes.

Q. But during the last year about how much business have you received over the D. & R. G. lines? I mean during the year 1905.

A. During the year 1905 we received via Rio Grande Western lines about 9,000 tons.

Q. How much did you deliver to them?

A. We delivered to the Rio Grande lines 110,000 tons.

Q. What is the distance from New York to Portland via the Sunset Gulf Route?

A. Approximately 5000 miles.

Q. What is the distance from New York to Portland via the Missouri River route?

A. About 3200 miles.

Q. What is the distance from Chicago to New Orleans via Southern Pacific and then the Illinois Central north or by any other road that may run north?

A. You mean Chicago to San Francisco?

Q. No, I mean from Chicago to Portland via New Orleans.

A. From Chicago to Portland via New Orleans is substantially 4,300 miles.

Q. What is it via Texas points?

A. What Texas points?

Q. El Paso.

A. I do not know what that distance is.

Q. What is the distance from Chicago to Portland via Missouri River lines?

A. It is 2300 miles.

Q. After the stuff got to Ogden via the Sacramento line, were there any other or different lines to interchange business with
869 at Ogden than there is if the stuff reaches Ogden via the Huntington lines?

A. No, sir.

Q. Identically the same roads to interchange with?

A. Yes, sir.

Q. And identically the same conditions present?

A. Yes, sir.

Q. So that the closing up of the Sacramento route simply involved a choice as to how the stuff would move from Portland to Ogden.

A. That is correct.

Q. Over the Southern Pacific in the one case, or the Oregon Short Line in the other.

A. Yes, sir.

Q. And now it is just as free to move from Ogden over any route as it ever was?

A. Yes, sir.

Q. I mean from Ogden east.

A. Yes, sir.

Mr. SEVERANCE. But not from Ogden west.

Q. From Ogden west you have no tariff via Sacramento, nor have you any tariff from here via Sacramento?

A. That is correct.

Q. But it is just as free to reach your line via Ogden from the east by any route and thence to come via Huntington as it ever was to reach Ogden and then come out via Sacramento, is it not?

A. Yes.

Q. Mr. Miller, all of the distributive business in the Willamette Valley is taken from what point; that is, what jobbing point?

A. Almost entirely from Portland.

Q. The rate adjustment is such that Portland even sells San Francisco products and California products in the Willamette Valley to the exclusion of San Francisco jobbers?

A. Yes.

Q. Then practically for all of this Willamette Valley country Portland has been for years the distributing centre?

870 A. Yes, sir.

Q. For example, I believe that you have a rate on sugar into Portland of 15 cents a hundred.

A. I think so. I think that is the rate by rail.

Q. And the rate by rail from here—the rate by rail from San Francisco to Ashland is what?

A. About 65 or 70 cents a hundred; but it is more than that. The rate from Portland is about 60 or 70 cents a hundred. The rate from San Francisco must be 80 cents a hundred. The rate from San Francisco to Ashland would be the rate from San Francisco to Portland plus the rate from Portland to Ashland.

Commissioner LANE. These rates to Portland are fixed by water competition?

WITNESS. Yes, sir.

Commissioner LANE. How effective is that now?

WITNESS. How effective is the water competition?

Commissioner LANE. Yes.

WITNESS. Well, there has always been more or less competition by steamer between San Francisco and Portland, and there is today.

Commissioner LANE. How many boats run regularly between San Francisco and Portland?

WITNESS. There is the San Francisco and Portland Steamship Company and there are other steamers engaged on the route; the steamer Roanoke, and I think the steamer Elder is now on there, and there are one or two others whose names I don't now recall.

871 Commissioner LANE. How far up the Willamette do those boats run from Portland?

WITNESS. The boats navigate as far as Corvallis when the water will permit.

Commissioner LANE. Do you get your terminal rate from San Francisco to Portland; that is, from places that are further up the Willamette?

WITNESS. No, sir.

Commissioner LANE. This is the only centre at which you recognize water competition?

WITNESS. Yes, sir.

Q. You spoke about the "Elder." Is that the "Elder" that was formerly operated by the O. R. & N?

A. Yes, sir.

Q. One of the boats which we lost?

A. Yes, sir.

Q. Mr. Miller, you know of no limitation other than shipping by the Sunset Route upon the movement of traffic, do you?

A. That is all.

Q. I mean the Sacramento-Ogden route.

A. The Sacramento route is all.

Q. But you don't retard the movement of it in any way whatsoever so far as the shipper is concerned?

A. No, sir.

Q. In regard to this D. & R. G. movement of company material, prior to the 29th of August, what rate did you have in effect for the Rio Grande Western and the Denver & Rio Grande and the Western Pacific on company material?

A. We made a rate of one-half cent a ton per mile in carloads from Portland and our Columbia River points to Huntington on company material for the Rio Grande lines.

Q. That rate was published, was it not?

A. Yes, sir.

872 Q. And filed with the Commission?

A. Yes, sir.

Q. And withdrawn on what date?

A. It was withdrawn on the 28th or 29th of August last, the date the Interstate Commerce Law went into effect.

Q. That was under the instructions which you had as to the meaning of the word "difference?"

A. No, it was not.

Q. Was that done supposedly by legal advice?

A. Yes, sir, that was upon the advice of counsel.

Q. And since that the D. & R. G., and Rio Grande Western and the Western Pacific are made commercial rates?

A. Yes, sir.

Q. That is all.

By Mr. SEVERANCE:

Q. Mr. Miller, you have detailed in answer to Mr. Cotton the various considerations moving to and fro, certain in favor of the O. R. & N. and certain in favor of the Southern Pacific, in connection with the closing of the Sacramento route. Now you think, taking it by and large, what the Southern Pacific gains in one way and the Oregon Railroad and Navigation Company gains in another way, that it is a pretty fair trade, do you?

A. Yes, I do.

Q. You think Mr. Stubbs made a fair trade for his company?

A. I don't know that Mr. Stubbs made it.

Q. Well, assuming that he did.

A. Assuming that he did, it was a good trade.

Q. But you think, don't you, that it would be a very good thing if all the railroads could trade off business in that way in consideration of traffic they were to get in another direction?

A. I can't answer that question.

873 Q. Well, as a general rule that is a pretty good way to do business, isn't it?

A. It depends altogether on the trade and the conditions of the trade.

Q. That trade involves practically the same conditions as pooling the business, and giving up one thing and taking another?

A. No, I don't think it does.

Q. That is to say, you give the O. R. & N. some traffic and the O. R. & N. gives you a little additional division on the part of the traffic?

A. Yes, but the O. R. & N. does not get all the business.

Q. No, that is unfortunate. You stated in answer to Mr. Cotton that there were a lot of very active energetic men here soliciting business for the lines east of Omaha. I have forgotten what adjectives Mr. Cotton applied to them, but they were very active men, and you were asked if you were not anxious to please those gentlemen who were soliciting business in the Willamette Valley, and you said you were, and that is true, isn't it?

A. Yes.

Q. But that business that they get goes east over the O. R. & N., doesn't it?

A. Not necessarily.

Q. What way does it go? How can they get business east of Omaha unless it goes over the O. R. & N?

A. Handle it in connection with the Northern Pacific.

Q. It would be rather a round-about way to take the business by the Northern Pacific to St. Paul and switch it to another road and carry it back down to Omaha?

A. It would not necessarily have to go via St. Paul; it might go via Billings.

874 Q. But Mr. Cotton was asking you about lines centering in Omaha, connecting with the Union Pacific in Omaha.

A. Yes, sir, that is right.

Q. You say you are anxious to please these gentlemen and glad to see them get business?

A. Yes, sir, indeed.

Q. And carry it east over the O. R. & N?

A. Yes.

Q. You stated further in your examination, in answer to Mr. Cotton, that these gentlemen were in effect rivals of the Sunset Route?

A. Yes, sir.

Q. You are an officer of the Sunset Route, are you not?

A. Yes.

Q. How is it then that you, as an officer of the Sunset Route, can enjoy this success of the gentlemen in getting the business as rivals of the Sunset? Can you explain that?

A. Well, these gentlemen represent lines which are also represented by gentlemen of probably equal ability in the east. They are soliciting business for other lines as against the Sunset Route.

Q. And you look on them with complacency and pleasure too? Rather glad to have their friendship; anybody who hates the Sunset Route is your friend; is that right?

A. Yes, I would be very glad to have him with me on my staff if he would only continue to talk it.

Q. And that is so in spite of the fact that you are general freight agent of the Sunset Route, and have defined the duties of a general freight agent as securing business and revenue for his road? That is so, is it, Mr. Miller?

875 A. Well, you must not refer to me as general freight agent of the Sunset Route, because I only represent a very small part of it.

Q. It runs clear down to California?

A. Well, I only have jurisdiction over 341 miles of it.

Q. Well, sir, I think you ought to have more.

A. Thank you.

Q. And I hope you will get it.

A. I hope you can arrange it so that I will.

Q. I will use my influence with Mr. Stubbs. That is all.

By Mr. COTTON:

Q. Mr. Miller, you have no jurisdiction and do not represent the Sunset Route any further south than Ashland?

A. That is all; that is as far as my jurisdiction goes.

Q. And you don't represent the Sunset Route at all, so-called, because that commences south of San Francisco.

A. I only represent it as being a part of the Southern Pacific Company.

Q. You work your business in your own jurisdiction as best you can, don't you?

A. Yes, sir.

Q. And as far as your individual road is concerned, that is, the road which is under your jurisdiction, this agreement is very greatly to your advantage, isn't it?

A. Yes, sir, very greatly to our advantage.

Q. And is not the effect of this whole arrangement to send traffic along the best route and along the line of least resistance?

A. Yes, sir, and very much in the public interest.

Q. That is all.

876 By Mr. SEVERANCE:

Q. Then this "divvy" was made in the public interest chiefly, was it; is that right?

A. I don't know whether the public got any part of the "divvy" or not, but I regard it very much to their interest to have the freight move by the lines of least resistance, by the shortest and best route.

Q. That is, you think it is to the interest of the public to move their traffic out of Portland over the O. R. & N., don't you?

A. Modesty prevents me from answering that question.

(A recess was here taken until 2 o'clock p. m.)

○

Volume II.

(EVIDENCE FOR COMPLAINANT.)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 446

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

FILED OCTOBER 9, 1911.

(22896)

No. 993—In Equity.

IN THE

Circuit Court of the United States

FOR THE DISTRICT OF UTAH.

THE UNITED STATES OF AMERICA,
Complainant,

v.

THE UNION PACIFIC RAILROAD COMPANY; THE OREGON SHORT LINE RAILROAD COMPANY; THE OREGON RAILROAD & NAVIGATION COMPANY; THE SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY; THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; THE SOUTHERN PACIFIC COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; FARMERS' LOAN & TRUST COMPANY; EDWARD H. HARRIMAN, JACOB H. SCHIFF, OTTO H. KAHN, JAMES STILLMAN, HENRY H. ROGERS, HENRY C. FRICK, and WILLIAM A. CLARK,
Defendants.

EVIDENCE AND PROCEEDINGS BEFORE THE SPECIAL EXAMINER.

Volume II.—Complainant.

WITH LIST OF WITNESSES AND EXHIBITS.

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TUESDAY, *Jan. 5, 1909.*

Present on behalf of the complainant, Mr. Kellogg, Mr. Severance, Mr. Iusted; on behalf of certain defendants, Mr. Lovett, Mr. Milburn Mr. Spooner, Mr. Beck, Mr. Blanc.

M. SEVERANCE. If your honor please, our first witness, Mr. Paul Moron, was here this morning, but he had an engagement for a few mintes after 2 o'clock, and therefore we will continue to read in testimony until he is able to get here.

Te EXAMINER. Very well.

Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by A. H. Payson, a witness before the Interstate Commerce Commission, who testified on the 29th day of January, 1907, at the cityof San Francisco, Cal. I understand it is agreed by all parties thatthis testimony may be written into the record, and have the same force and effect as though Mr. Payson were on the stand giving the same testimony.

Mr. LOVETT. Yes.

A. H. PAYSON

testfied:

Examined by Mr. SEVERANCE:

Q. Mr. Payson, where do you live?

A. I live in San Mateo.

Q. And what is your business?

A. I am assistant to the president of the Santa Fe.

Q. How long have you occupied that position, Mr. Payson?

A. I think four years; I don't remember exactly the date of my appointment to that office. I was in the employ of the Santa Fe before that.

Q. What in a general way are your duties?

A. My duties have been practically limited to the acquisition of terminals in San Francisco by the Santa Fe Company, and its general relations with the public in the matter of franchises.

Q. Have you had anything to do with traffic?

A. Nothing whatever.

878 Q. Who is the representative of the Santa Fe here in regard to traffic?

POOR COPY

A. Mr. W. A. Bissell.

Q. Mr. W. A. Bissell you say, Mr. Payson?

A. Mr. W. A. Bissell, and now—Mr. W. A. Bissell for both freight and passenger, and Mr. Chambers for freight traffic.

Q. Mr. Bissell is what? What is his title?

A. W. A. Bissell, assistant traffic manager.

Q. I am informed that an effort was made to serve a subpœna on Mr. Chambers to appear here, but we are informed he is out of the city. Do you happen to know where Mr. Bissell is in the city?

A. Mr. Bissell is in the city.

Q. I suppose we could get him on the telephone, then?

A. I think so.

Q. Now, Mr. Payson, you say that your duties have largelybeen confined to the acquisition of terminals in about San FranciscoBay, do I understand?

A. Yes.

Q. And you have had nothing whatever to do with traffic?

A. Nothing whatever.

Q. And are not consulted about traffic at all?

A. And not consulted about traffic, no.

Q. We were informed that you were, by some one in your office. Mr. Payson, you are one of the incorporators, I believe, of the Northwestern Pacific—is that the title?

A. Northwestern Railroad Company.

Q. Northwestern what?

A. Railroad Company.

Mr. DUNNE. If you will pardon me, it is the Northwestern Pacific Railroad Company.

Q. The Northwestern Pacific Railroad Company, yes.

A. Yes, sir.

879 Q. And that company was formed by whom?

A. It was formed by the Atchison and Southern Pacific companies, holding the stock as owners.

Q. What is the capital stock of the Northwestern Pacific Company?

A. Thirty-five millions of dollars.

Q. And in what proportions do the two corporations you have mentioned own that stock?

A. It is equally divided.

Q. Prior to the incorporation of the Northwestern Pacific, did the Santa Fe have any railroad lines off to the north and west of San Francisco?

A. It did.

Q. Will you state what those lines were and where they ran?

Mr. DUNNE. At this time you refer to the Northwestern Pacific?

Mr. SEVERANCE. Yes.

A. It had a line of railway running from Arcata, which is nine miles north of Eureka, in California, southwardly through Eureka, to a point on the Eel River south of Eureka about forty-three or forty-four miles, as I recollect, from its point of origin.

POOR COPY

Q. When was that line of road built?

A. I don't know when it was built. It was already built when it was acquired by the Santa Fe.

Q. When was it acquired by the Santa Fe?

A. I can't give you that information; I would not like to answer that offhand.

Q. I don't care about the exact date. Give me about the date.

A. I think about four or five years ago.

Q. Four or five years ago?

A. I think so.

880 Q. What are the connections at present, if any, of this line of road running from Arcata through Eureka and to the south?

A. It has no connections except with—there is a physical connection at Arcata with a road called—something—Mad River Road, I think, which is practically a logging road running up the Mad River. That is all.

Q. This road, as I understand you, is a little over fifty miles long?

A. About that—less than fifty.

Q. Do you know by whom it was built?

A. It was built by several people in Eureka. Prominent among them were Mr. John Vance and Mr. William Carson.

Q. Has the Santa Fe been operating this road since it was built?

A. Ever since it was acquired.

Q. I mean since it was acquired by it.

A. Since it was acquired, yes.

Q. What is the nature of the traffic tributary to that road?

A. Mainly lumber, forest products, with some dairy products from the Eel River Valley. It also does a large, or relatively large, passenger business; there is a good deal of travel on it.

Q. This passenger business is in and out of Eureka, is it?

A. The passenger business is in and out of Eureka to the various mills, and to the Eel River Valley, which is a thriving agricultural settlement.

Q. And where was that built?

A. That was built on the southern end, an extension on the southern end towards San Francisco, along the line that will ultimately be built, and it was built to get into another body of timber which

881 was owned by the Scotia Mill.

Q. To what point do you transport these various products and lumber over the line of this road?

A. We transport logs to the mills, and lumber to the landings.

Q. What landings?

A. There is one important landing at what is known as South Bay, which is about nine miles south of Eureka; and the wharves in Eureka themselves. Those are the principal landings.

Q. And from these wharves in Eureka, and this other place called South Bay, to what points is the lumber distributed?

A. Well, it goes to San Francisco, it goes to Australia, and it goes to China. We have nothing to do with it after it goes to the wharves.

Q. I understand. Are there lines of ships running to Eureka that take this lumber?

A. There are frequent steamers to Eureka, between Eureka and San Francisco.

Q. And between Eureka and Australia?

A. That is an incidental traffic, done in sailing vessels of small size that come in there for orders. It is not a regular line.

Q. Then the bulk of the lumber, I take it, comes down to San Francisco. Is that right?

A. I think the bulk of it does.

Q. And from San Francisco it is further transported over rail lines?

A. Yes. I can't give you any figures about that. Some of it goes east, but a comparatively small amount, as I understand it. The bulk of it is, I think, for California consumption, and is distributed from San Francisco.

Q. But some of it goes to the east?

882 A. Some of it, but not very much.

Q. Over what lines or road does it move to the east from San Francisco?

A. Well, it is moved by any line after it gets to San Francisco. I don't know about the subdivision of it.

Q. There are only two lines from San Francisco east?

A. Only two lines.

Q. It is moved by either of the two lines?

A. It is moved by either line.

Q. Either the Southern Pacific or the Santa Fe?

A. Either the Southern Pacific or the Santa Fe, yes.

Q. What is the name of this corporation that owns this fifty-mile road?

A. Since the incorporation of the Northwestern Pacific Railroad Company——

Q. I don't mean the Northwestern Pacific, but what was the name of the corporation that owned it when the Santa Fe acquired its stock?

A. The bulk of it was owned by what was called the Eel River & Eureka Railroad.

Q. By the Eel River & Eureka Railroad?

A. The Eel River and Eureka Railroad, yes.

Q. By what corporation was the balance of it owned?

A. The balance of it was owned by the owners of the Eel River & Eureka, but under different names; they had formed some smaller corporations and built extensions.

Q. Did the Eel River & Eureka road, or any of these other smaller corporations, acquire the stock of that logging road that you spoke of that ran up the Eel River?

A. No, sir.
Q. That is separate, is it?
A. That is separate now.
Q. That belongs to some other lumber company?
883 A. That belongs to some other lumber company. I think they call it the Arcata & Mad River, but I am not quite sure.
Q. Did the Eel River & Eureka road, or any of these other smaller corporations, acquire the stock of that logging road that you spoke of that ran up the Eel River?
WITNESS. If you will allow me, I misunderstood that question. In a previous question you asked me if we had any connections, and I said with only one foreign road, and that was the Arcata & Mad River, that made a connection, physical connection, with our tracks in Arcata.
Q. I got the name wrong in this last question, then.
A. You have got the name wrong, yes.
Q. What is the name of it?
A. The Arcata & Mad River. That runs up the Mad River, not the Eel River.
Q. And that road is still owned by a lumber company?
A. Still owned by a lumber company.
Q. So that the Santa Fe's holdings are this line of road, about 51 miles of road—something like that.
A. Yes, sir.
Q. With the connections at Eureka, and the other landings that you have mentioned?
A. Yes, sir.
Q. And that has been run for four years by the Santa Fe?
A. About.
Q. What kind of an organization did that road have? Did you have a manager up there?
884 A. We had a vice-president and general manager there, and he reported directly to me. The property was under my charge, practically.
Q. What other railroad, if any, did the Santa Fe have which went into the Northwestern Pacific?
A. It owned what was called the Fort Bragg and Southeastern.
Q. The Fort Bragg and Southeastern?
A. Yes, sir.
Q. Where is that line located?
A. It starts from the coast at the port of Albion, and runs from there about 23 miles southerly and easterly.
Q. How far is Albion from Eureka?
A. Oh, pretty nearly 200 miles, I should say.
Q. Nearly 200 miles from there?
A. 200 miles, yes, sir.
Q. Further north?

A. South.

Q. Further south I meant to say.

A. Yes, sir.

Q. And how far is Albion from San Francisco?

A. About 80 miles, I think. Perhaps more than that—nearly 100 miles.

Q. So that you had this line of road, commencing about 80 miles north of San Francisco?

A. Yes, sir; 80 miles—more than that—perhaps nearly a hundred miles. A hundred miles say.

Q. And running southeasterly?

A. Yes, sir.

Q. Towards San Francisco?

A. Towards San Francisco.

Q. So the southerly terminus of this road, the Fort Bragg & Southeastern, is between 75 and 80 miles north, or northwest, of San Francisco?

A. Well, the 20 miles was not directly cutting off the distance to San Francisco. The present southern terminus of the Fort Bragg & Southeastern, by the nearest way you could get to it, would be
885 more than a hundred miles from San Francisco.

Q. From whom did the Santa Fe people acquire the Fort Bragg & Southeastern?

A. The lumber interests that had the Albion mill.

Q. And what was the purpose of that acquisition by the Santa Fe?

A. It was the nucleus of a feeder which would tap the Mendocino timber country and be tributary to San Francisco.

Q. That is, you bought that line with the intention of making it the nucleus of a line of roads to go up from San Francisco to tap the timber country?

A. A part of a line of roads to go north to tap the timber country.

Q. And at that time the Santa Fe expected to construct that line itself?

A. It did.

Q. Yes. And it was also contemplated by the Santa Fe that this line, the Fort Bragg & Southeastern, would be extended farther north, to a connection with this other line that you first mentioned, called the——

A. At the time we bought the Fort Bragg & Southeastern we had not sufficient knowledge of the country to know whether it would form part of a through line from San Francisco north to Humboldt Bay, or whether it could only be used as a feeder to such a through line. Our subsequent surveys disclosed the fact that it could not be made a part of the through line, that it could only be used as a feeder.

Q. As a feeder?

A. Yes, sir.

Q. But the line in the north, the Arcata line, was to be part of a through line to San Francisco?

A. It was.

Q. Did the Santa Fe own any other railroads that went into
886 the Northwestern Pacific?

A. None, except the Fort Bragg & Southeastern, and the aggregation, which I have described to you, about Humboldt Bay.

Q. What was the nature of the traffic moving over the Fort Bragg & Southeastern?

A. Nothing but logs for the Scotia mill—I should say the Albion mill.

Q. The Albion mill sawed the logs and shipped them down by water?

A. Yes, sir.

Q. Now, what railroad lines did the Southern Pacific have that went into the Northwestern Pacific?

A. They had the North Shore, the——

Q. Let us take them up one at a time and have them described. Where does the North Shore line run?

A. The North Shore line runs from Sausalito to a point called Cazadero, up just north of the Russian River, with a branch to the town of San Rafael.

Q. How long is that railroad?

A. Well, I can't say exactly; I think about 80 miles.

Q. And how near does that come to San Francisco?

A. Sausalito, which is across the bay, on the other side of the bay, on the Marin County shore, about six miles by water.

Q. Does the Southern Pacific have a rail connection between Sausalito and its lines running to the east and south?

A. I can't say exactly as to that. I think it does.

Mr. DUNNE. What do you mean, an all-rail connection?

Mr. SEVERANCE. From Sausalito, Mr. Dunne.

Commissioner LANE. You could have rail connection by Tiburon and through there to the rest of the system?

Mr. SEVERANCE. Yes, that is what I mean.

887 Mr. DUNNE. Do you mean is there at present such an all-rail connection? Is that the question?

Mr. SEVERANCE. Yes, whether there is a rail connection so that cars could be switched from Sausalito, or from some other point on that road, to your main lines to the east and south. Do you know, Mr. Dunne?

Mr. DUNNE. I don't know of any all-rail connection, except very circuitous one.

Commissioner LANE. That can be done by the Southern Pacific by way of Vallejo Junction.

Mr. DUNNE. It would have to go that way.

Mr. LOVETT. There is a connection up there somewhere that would connect with the Southern Pacific, but I don't know just where.

Q. How far is this 80 miles of the Southern Pacific from the Fort Bragg & Southeastern?

A. it is not very far as regards distance, but a connection between them would be a practical impossibility on account of the country.

Q. On account of the grades?

A. On account of the country, the mountainous, difficult country.

Q. What is the distance between them, Mr. Payson?

A. You mean from the Fort Bragg & Southeastern, the nearest point of the Fort Bragg & Southeastern?

Q. Yes.

A. To Cazadero?

Q. Yes.

A. Well, it would be, I should say, 80 miles as the crow flies, across the country.

Q. It would be 80 miles?

A. Yes.

888 Q. Then it is just as far from the nearest point on the Sausalito road as it is from San Francisco, to the Fort Bragg & Southeastern?

A. Well, it is not very much farther, because there is not very much difference. The Duncans Mills road does not run due north; it runs over towards the coast. I can't speak of these distances, you know, with exact knowledge.

Q. What is the next line of road owned by the Southern Pacific which goes into the Northwestern Pacific?

A. What is called the San Francisco & North Pacific Coast—I believe that was the title for it—now called the California Northwestern, that is the late title for it.

Q. How long a road is that?

A. The California Northwestern?

Q. Yes.

A. I can't say exactly. I think about 137 or 140 miles, but I have never had any direct connection with those properties, and I don't carry those figures in my head.

Q. In making this consolidation, you acted for the Santa Fe, did you not?

A. No, sir. Those negotiations were made in New York.

Q. They were made in New York?

A. Yes, sir.

Q. Between whom? Do you know?

A. No, sir.

Q. This California Northwestern, you say, is 140 miles long?

A. I think so; I am not quite sure about that.

Q. Does the California Northwestern run anywhere near these other lines?

A. It runs up the Sonoma Valley; the California Northwestern goes up the Sonoma Valley, which is a valley parallel to the coast, but entirely separated from the North Shore topographically.

889 Q. It is separated from the North Shore line topographically and is also separated from the Fort Bragg & Southeastern?

A. Absolutely. Of course, connections could be made by going through the hills down into the Sonoma Valley.

Q. There is still another line of road, is there not?

A. Of the Southern Pacific?

Q. Yes.

A. That is the Eureka & Klamath.

Q. The Eureka and what?

A. Klamath.

Q. Where does that run?

A. That runs north from Arcata towards Trinidad, on the coast.

Q. Runs north from Arcata, which is the terminus, is it not, of your——

A. Of our road.

Q. Of your road; yes.

A. Yes, sir.

Q. And it runs to what point?

A. Well, near Trinidad.

Q. Does it reach a harbor on the Pacific Ocean?

A. Not yet.

Q. How far is it from it?

A. Only a few miles. But it is not a harbor; it is an open roadstead.

Q. Is it under construction?

A. Those few miles?

Q. Yes.

A. I don't think so.

Q. At the present time, then, that line does not reach any port?

A. It reaches no port except the port of Eureka—indirectly the port of Eureka.

Q. Over your rails?

A. Over our rails. And, also, there is a branch that leaves Arcata and goes around on the spit which separates Eureka from the sea, and therefore reaches tidewater on the Bay of Eureka.

Q. Do ships meet it at that point?

A. Yes, sir.

890 Mr. LOVETT. What is that?

Mr. SEVERANCE. I asked him if ships meet that branch at that point.

Q. What is the class of traffic that moves over that line?

A. Practically a lumbering road exclusively. It brings logs to the mill on Humboldt Bay, and that is practically all—with supplies for the logging camps out.

Q. I don't think you told me how long that road is—the Eureka & Klamath?

A. Well, I don't know. I think about 20 or 30 miles.

Q. About 25 or 30 miles?

A. Not more than that.

Q. And that does not do a general business, as your line running into Eureka does?

A. It hasn't got it to do.

Q. Except to the extent of lumber?

A. And the supplies for the campers out.

Q. Supplies out; yes. Now, the Northwestern Pacific has been organized by those two companies, and it has acquired these roads. What additional lines is it proposed to build?

A. It is proposed, as I understand it, to build the connecting link between the present northerly end of the California Northwestern and the southerly end of what was the San Francisco Northwestern. In other words, it is proposed to connect the Southern Pacific properties on the south with the properties formerly of the Atchison on the north. And also——

Q. Do you mean the California Northwestern?

A. Yes, sir. The two names are confusing. One was San Francisco Northwestern; the other California Northwestern. The California Northwestern was the——

891 Q. The California Northwestern is the Southern Pacific line?

A. —Southern Pacific line, and the San Francisco Northwestern was the Atchison line in the north.

Q. They had the Fort Bragg & Northeastern?

A. No, sir; the Fort Bragg & Southeastern is the one.

Q. Then, that is still another one you have not mentioned yet, is it?

A. Yes; I described it to you a little while ago.

Q. I think not.

A. It is the road from Albion.

Q. Oh, that is the one?

A. That is the one.

Q. I thought you called that the Fort Bragg & Southeastern.

A. That is the Fort Bragg & Southeastern, yes; that is the one I described to you.

Q. You are speaking now of the California Northwestern?

A. The California Northwestern included the North Shore and that other road up the Sonoma Valley.

Q. Belonging to the Southern Pacific?

A. Belonging to the Southern Pacific.

Commissioner LANE. You intended, Captain, to extend down this way towards the Bay of San Francisco?

WITNESS. That was our plan.

Commissioner LANE. That was your plan, the Santa Fe's plan?

WITNESS. Yes, sir.

Commissioner LANE. Instead of that you have consolidated the two roads, and you intend that the road that extends up through Willits shall meet your road up to Humboldt Bay?

WITNESS. Yes, sir.

Commissioner LANE. And the connection that you make you

892 call the San Francisco Northwestern?

WITNESS. The San Francisco Northwestern was the name which the Santa Fe gave to those small properties which it got into a single corporation up around Humboldt Bay.

Commissioner LANE. You consolidated those companies there?

WITNESS. Yes, sir; consolidated them.

Commissioner LANE. And called the consolidated roads the San Francisco Northwestern?

WITNESS. Yes, sir; the San Francisco Northwestern.

Mr. DUNNE. The Fort Bragg & Southeastern is a lateral?

WITNESS. The Fort Bragg & Southeastern is a lateral, yes. I did not finish my answer as to the projected construction.

Q. Proceed with your answer.

A. First the link of which I speak, connecting those properties on the south with those on the north.

Q. How long a link was that?

A. That would be about 110 miles. And then possibly a lateral which will connect this Fort Bragg & Southeastern with the main trunk line, and tap Mendocino County.

Q. And that other line, then, will be controlled by the two companies, jointly?

A. By the two companies, jointly.

Q. Have you a contract between the Southern Pacific and Santa Fe with reference to that matter, in writing?

A. There is such a contract. I haven't it.

Q. Who has that?

A. It was prepared in New York.

Q. Is it in New York, as far as you know?

893 A. As far as I know.

Q. It is not here.

A. Well, I don't know that it is not here.

Q. At least, if it is, you don't know where it is?

A. I don't know where it is.

Mr. LOVETT. It is in New York and we will furnish it to you.

Q. That contract, as you understand it, contemplates a change from year to year of management, does it?

A. As has been reported to me, it gives the two companies alternately a majority of the Board of Directors, in alternate years.

Q. We will get the contract in New York.

Commissioner LANE. Judge Lovett, will you let me see that map, please?

Mr. LOVETT. Certainly, your honor.

Q. I suppose that, in view of having made this arrangement with the Southern Pacific, the Santa Fe has abandoned its idea of extending the lines down to San Francisco Bay. You intend to use this road jointly?

A. Not abandoned it. We intend to pay half the cost of it.

Q. But as an independent proposition, you have abandoned it; you have substituted a joint line for your own proposed line?

A. Exactly. We have abandoned the intention of building it alone.

Q. This projected line that you intended to build would that have gone up the coast alongside of either of these Southern Pacific lines?

A. No, sir.

894 Q. It would not?

A. No, sir.

Q. It would have gone through a different valley?

A. Through a different valley.

Q. Entirely separate?

A. Oh, I beg your pardon, perhaps I did not understand your question.

Q. I asked you whether—you said you had contemplated building a line down from the north.

A. Quite so.

Q. And to the bay?

A. Yes, sir.

Q. I asked you whether that contemplated line would have gone up to your line, to your connection, alongside or in the vicinity of the Southern Pacific lines?

A. I don't know. It would not have done so if we could have avoided it. Our surveys were directed towards finding an alternate line which would be practicable and to get into an entirely different territory.

Q. Do you know whether you were successful?

A. We were successful in finding possible lines through Lake County.

Q. That country up there is mostly timber country, is it not, Mr. Payson?

A. Where do you mean?

Q. Well, all that northern country from here up. From 50 miles north up to Eureka.

A. From the present end of the Southern Pacific Company's lines, I will call them, for the sake of clearness——

Q. Yes.

A. From there north to Humboldt Bay there is practically nothing in the way of timber along the Eel River; it is a stock country pure and simple, of but little value. The redwood timber is not found until you get within a very short distance of Humboldt

895 Bay. There is nothing to feed a railway between the present northern end of the Southern Pacific properties and the Redwood timber, which comes but a short distance south of Humboldt Bay.

Q. And that is a matter of 150 miles?

A. 110 miles.

Q. 110 miles?

A. Not 110 miles out of the timber; it will be possibly 90 to 100 before you get to the timber—90 miles, certainly, north.

Q. Do you happen to know, sir, whether there are any other lines of railroad projected into that region, into that timber country, I mean?

A. I don't know of any.

Q. You haven't heard of any?

A. I haven't heard of any.

Q. Is your company operating steamships?

A. No, sir.

Q. You do not?

A. No, sir, except the ferryboats on the Bay.

Q. Yes, I understand, but you do not connect by steamer with any of these northern ports for this lumber traffic?

A. There is one exception that I should state. We have a contract with the Albion Steamship Company to bring lumber to San Francisco—the Fort Bragg & Southeastern has a contract with the Albion Steamship Company, by which they take the lumber we deliver at Albion and bring it down to San Francisco.

Q. That is, the Santa Fe has a contract with the Albion Steamship Company?

A. Yes, sir.

Q. By which it takes lumber delivered to it by you at Albion?

A. At Albion.

Q. And brings it down to San Francisco?

A. To San Francisco, yes, sir.

Q. Do they make through shipments to the points on the line
896 of the Santa Fe road?

A. No, not—the lumber may go through, but it is not billed through. We know nothing about what becomes of it after we deliver it to them.

Q. There is no connecting line, no billing through?

A. No, sir.

Q. They do not issue through bills?

A. No, sir. We do not know what becomes of it after it leaves Albion. We simply have an arrangement with the steamship company by which they take it down, and that is the end of it so far as we know.

Mr. LOVETT. Until it reaches where?

WITNESS. San Francisco.

Q. In other words, it has an outlet over the Santa Fe or Southern Pacific?

A. Or Southern Pacific, yes, sir.

Q. Either one?

A. Yes, sir.

Q. Is that a contract which is subject to be terminated at any time, that contract that you speak of?

A. That contract was a contract we inherited from the people from whom we bought the road, and it terminates by its terms whenever there is a rail connection with San Francisco.

Q. So that they won't be in your way after the rail connection is made?

A. With the rail connection, it ends.

Q. Now, you say that that is the only contract that you have with any steamship line?

A. That is the only contract of which I have any knowledge.

Q. Have you any contracts or any transactions, Mr. Payson, with any of the Oriental lines, the Oriental steamship lines?

A. I have nothing to do with that part of the business. I
897 said that is the only contract of which I have any knowledge.

Q. In whose charge would that matter be, that matter of contracts with Oriental lines—Mr. Bissell's?

A. I assume Mr. Bissell would know about those arrangements.

Q. He would know about that?

A. Yes, sir.

Q. Do you have charge of the other lines, or have anything to do with the other lines of the Santa Fe in the State, outside of the lines around San Francisco and in the north?

A. I have nothing to do with the operation of any of the lines of the Santa Fe, except these northern properties.

Q. But you are familiar with the ownership, are you not?

A. In a general way.

Q. Is there a line of road down near Mojave somewhere which is used jointly by the Southern Pacific and Santa Fe?

A. There is a line from Bakersfield to Mojave over the Tehachapi Pass that is used jointly by the Southern Pacific and the Santa Fe.

Q. Who owns the line?

A. The Southern Pacific.

Q. How long a line of road is that? How much track?

A. About 70 miles, I think; I think it is 70 miles.

Q. Is it operated independently by the two companies, or how is it done?

A. It is operated by the Southern Pacific, the Santa Fe paying a rental, which was fixed by the estimated cost of the property, and which is constant for each year, and also a proportion of the operating expenses and maintenances, which is divided between the two companies in the proportion of their use of the road.

Q. And you each run through trains over it?

A. We each run through trains over it.

898 Q. But it is operated by the Southern Pacific?

A. It is operated under the direction of the Southern Pacific.

Q. Does that mean any more than that the train dispatcher of the Southern Pacific has charge of the track? You run your own trains, do you not?

A. The operating officials of the Southern Pacific have control of our trains. Our trains are our own equipment, but they are under the control of the Southern Pacific officials while they are on that track.

Q. But it is your own power that pulls them through?

A. Yes, sir.

Q. And your own trainmen?

A. Yes, sir.

Mr. LOVETT. All of that is expressed by the contract, Mr. Severance, and we will furnish you that contract.

Mr. SEVERANCE. All right, I would like to have that if you will let me have it.

Mr. LOVETT. Yes, I think we have a copy of it.

Q. Outside of that line there, that 70 miles, is there any track in Southern California that you know of which is used jointly or owned jointly by the Southern Pacific and Santa Fe?

A. I don't know of any.

Q. There is none of the track up the valley from Los Angeles to San Bernardino that is used jointly?

A. I don't think there is any used jointly by the Southern Pacific and the Santa Fe. It is my impression there is none.

Q. Some of that track down in the valley there is used by the Salt Lake road, is it not?

A. I think that what you are speaking of, between San Bernardino, and that part of the country, there is some arrangement with
899 the Salt Lake road about. I am not familiar with the details.

Q. We have the contract relating to that.

A. Yes, sir.

Q. Your company owns the road running to San Diego, does it not?

A. Yes, sir.

Q. Do you happen to have any knowledge as to the steamship connections with San Diego, or does that all come under Mr. Bissell?

A. All comes under Mr. Bissell. I have no knowledge of it.

Q. You have no knowledge of that?

A. No, sir.

By Commissioner LANE:

Q. Is there any practicable way, Captain, of building down the coast from Oregon, excepting over one of the lines that the Northwestern Pacific owns?

A. I think it is practicable to come down the coast from—well, by a line of railway. It would be very expensive, but it is practicable, possible.

Q. In order to get to San Francisco Bay, would it be necessary to come down over the lines of the Atchison, that the Atchison owns, or that the Southern Pacific owns?

A. From the north—no.

Q. What way could the line come down?

A. The line could follow the coast for most of the way. It would be very difficult, but it is possible.

Q. You have, then, in this consolidation those lines which have the easiest means of access to the Bay of San Francisco from the north?

A. I think it is the best line.

Q. And you have all the roads from the north of San Francisco Bay up to the Oregon line?

A. Our joint interest with the Southern Pacific extends no farther than Trinidad, than this Eureka & Klamath, which I believe ends somewhere up near Trinidad.

900 Q. There are some roads up farther north than that in California, are there?

A. I believe there is a road projected from Coos Bay to the coast, but there is no road along the coast north of that.

By Mr. SEVERANCE:

Q. Do you know anything about the arrangements that are made with the Japanese line of steamships here—the connection?

A. No, I know nothing about that.

Q. You don't have anything to do with that at all?

A. Nothing whatever.

Q. Nor do you have anything to do with the connections that are made at Los Angeles or San Diego?

A. Nothing to do with it whatever.

Q. Has the Southern Pacific Company any interest in your San Joaquin line?

A. None at all.

Q. None at all?

A. None at all.

Q. That is owned by the Santa Fe alone?

A. Absolutely.

Q. And the only part of the Southern Pacific line that you use is the line from Bakersfield to Mojave?

A. It is practically a bridge, that is all it is. There is practically no traffic alongside of it. It was simply a bridge from one piece of line to another, over the Tehachapi.

Q. Are the terminals in San Francisco in which the Santa Fe is interested owned exclusively by the Santa Fe?

A. Exclusively by the Santa Fe.

Q. Are the terminals around the Bay of San Francisco known as Santa Fe terminals exclusively owned by the Santa Fe?

A. Exclusively by the Santa Fe.

Q. The Southern Pacific has no property interests what-

901 ever in any of the terminal lines that come under your management?

A. Has no interest in any of the terminal facilities in San Francisco that are known as Atchison terminal facilities. There is no interest in any of the property of the Santa Fe in San Francisco or in Oakland held by the Southern Pacific.

Q. There is no interest, you say, in any of the property of the Santa Fe, in San Francisco or Oakland, owned by the Southern Pacific. That is a correct statement, is it?

A. Oh, I beg your pardon. I think I have made one error there. There is a joint ownership of the stock-yards out there in the Potrero; that is, the land is jointly owned by the Southern Pacific and Santa Fe. But with that exception, the statement is true.

Q. Then, is it a correct statement of your relations with the Southern Pacific that you have no joint ownership in any railroad properties, either main line or terminals or terminal facilities, except in such as you have in the Northwestern Pacific, and the portion that you use from Bakersfield to Mojave?

A. And this joint interest in the stock-yards.

Q. That is all?

A. That is all.

Mr. LOVETT. He has forgotten the line from Needles to Mojave, owned by the Southern Pacific.

Mr. SEVERANCE. Is that jointly used?

Mr. LOVETT. It is owned by the Southern Pacific, but used exclusively by the Santa Fe. I am referring now to the line from the Needles to Mojave——

WITNESS. The old Atlantic and Pacific.

902 Mr. LOVETT. Yes, owned by the Southern Pacific, but leased to the Atchison.

WITNESS. That is a piece of ancient history that I did not know. But I knew we operated it exclusively.

Mr. LOVETT. For all practical purposes it is the Atchison line. The legal title is in the Southern Pacific, but the Atchison has run it since 1879, I think.

Mr. J. C. STUBBS. You have forgotten about the Sunset Oil Fields' Road.

WITNESS. Oh, yes, I did forget the Sunset. There is a small road out of Bakersfield to the Sunset oil fields built jointly by the Southern Pacific and ourselves several years ago, and it is jointly owned and alternately operated. We take turns in operating it.

Q. Under a similar arrangement to that you have with the Northwestern Pacific?

A. No, sir; not exactly. In the Northwestern Pacific, it is supposed the operation will be continuous, but the majority of the directors will change from year to year, whereas with the Sunset line we actually take turns in operating the road. The Southern Pacific takes it for one period, and then we take it afterwards for a like period.

Q. That road is practically an oil road exclusively?

A. That is an oil road exclusively, goes out to the oil fields at Sunset.

Q. It taps wells owned by the Atchison road?

A. I don't think at present it does, and I don't think—when it was built, the Atchison had no property in that territory at all. Since then it has acquired an interest in the Midway Field, which this

903 Sunset line does not exactly reach, but it is in that direction.

Q. Is the property, then, all property that is also owned by the Southern Pacific?

A. No, sir, that is not owned jointly with the Southern Pacific.

Q. There is no oil property in the neighborhood of Sunset, that you know of, owned by the Southern Pacific?

A. I don't think there is any jointly owned by the Southern Pacific and Santa Fe that I know of, tributary to the Sunset line.

Q. Is there any independently owned by the Southern Pacific in the Sunset District?

A. I don't know of any.

Q. How long a line of road is that?

A. About 20 miles.

Q. You say that was built jointly by the two companies?

A. Well, it was a plan of Mr. Tevis, Mr. William Tevis, who lives down there in Bakersfield. He was going to build it himself, and finally the two roads agreed to bear the expense, in other words, take the bonds and jointly own the property.

By Commissioner LANE:

Q. Now, then, with the exception of the Sunset Road, the lease that you have for the use of the line from Bakersfield to Mojave, and the lease of the line from Mojave to The Needles, the terminals at the union stockyards, and the Northwestern Pacific running north from San Francisco Bay, all the other properties known as Atchison properties in this state are owned exclusively and controlled by you?

A. To the best of my knowledge.

Q. With the exception of what is known as the Clark line that runs into San Francisco—that runs into Los Angeles, I
904 should say—there are no other eastern rail connections to California except the Southern Pacific and the Atchison, are there?

A. Not now.

Q. By the acquisition and consolidation of the roads to the north of San Francisco Bay under the Northwestern Pacific system, you have the most practicable route of access from the north?

A. I think so. There are other roads possible, but that is the best one.

Q. Is there any practicable way in the southern end of this state, the southeasterly end of this state, for coming into Los Angeles from the south, that is not now controlled either by the Southern Pacific or the Atchison?

A. I don't know about that. I understand there are plans for an independent line from San Diego and east over what I believe is a practicable route.

Q. That is what is known as the Spreckels' line?

A. That is what is known as the Spreckels' line.

Q. Running east of San Diego over to Yuma?

A. Yes, sir.

Q. And there to connect, possibly, with the Southern Pacific?
A. With any line.
Q. Or with any other line of road?
A. Yes, or with any other line of road.
Q. With which they can make a connection?
A. Yes, sir.
Q. But that does not contemplate going eastward out of California?
A. I don't know. I don't know about that.
Q. Have you had any lines surveyed through the north, the northern portion of the state, that is, the northeastern portion of
905 the state, running from San Francisco Bay up to Lake County and through there?
A. We had a survey running north from the Bay of San Francisco to Lake County, and thence into the drainage of the Eel River, and so on to Humboldt Bay.
Q. Was there, at the time the consolidation was made between the Southern Pacific Company and the Atchison of these northwestern lines, any alternative railroad connection from the northwest?
A. I don't quite understand the question.
Q. Was there proposed at the time that you made this consolidation, considered possible that a road coming from the east or from the northeast toward any of your lines on Humboldt Bay, would be connected with those lines, that is, alternative to the Southern Pacific?
A. Did we have any information that there were other plans of other roads for using that territory?
Q. Yes.
A. None, whatever. I don't think it was possible.
Q. You don't think it was possible?
A. Well, from the east, no; from the Sacramento Valley across to that country, I don't think it was possible. But we heard no plans, at least, I never had any intimation that anybody else was seeking an entrance to that territory. Our arrangement with the Southern Pacific was simply to save expense. We were both staggered by the expense which the surveys disclosed would attend the construction of that line. It is a most difficult country, both for construction and maintenance, and when it came to the question of building two parallel roads into the country, there was not enough in it to make it worth while.

By Mr. SEVERANCE:

Q. Speaking of there being two parallel roads in the country,
906 had the Southern Pacific in contemplation the extension of their lines to Humboldt Bay?
A. Yes, sir. They were also planning to extend their lines.
Q. And they had surveys made?
A. They were making surveys, yes.
Q. And both the Southern Pacific and the Santa Fe abandoned the idea of building independent lines which would be parallel,

you say, each to the other, in favor of saving expense and building one line?

A. Exactly.

Q. And that line to be operated the way you have stated, one year by one company——

A. Yes.

Q. And the next year by the other?

A. Yes, sir.

Q. Had you gone to the extent of procuring any right of way for this extension to the north prior to this consolidation?

A. Practically none. For a few miles below the southern end we had a right of way agreement with the farmers, but practically nothing obtained.

Q. Had you definitely located your line?

A. No, sir.

Q. Had you decided on the line within reasonable limits? You knew in a general way where it was going, did you not?

A. We knew—if we were forced to build an independent line, we would probably have—there is one line marked out as the best line. All of the others are attended with a good many difficulties. They are possibilities, of course, but they involved very heavy grades and heavy work. The best line is along the drainage of the Eel River.

Q. Is that the line that is to be followed by the joint action of the companies?

907 A. That is the line that is to be followed; that is, the line we have practically decided on as the best. But the others could be followed, if necessary.

Q. Was it feasible for the Southern Pacific to build a branch to this Humboldt country from its terminal?

A. No, sir. It would be practically impossible.

Q. On account of the nature of the country?

A. On account of the nature of the country.

Q. The only feasible way to tap that country is by a north and south line?

A. The feasible way is by north and south lines, but there are more possibilities than one in the way of a north and south line.

Q. But you say that the one you have is better, that there is one that you think is better?

A. We think it is best, because it gives a better grade.

Q. Gives you a better grade?

A. Yes, sir. It will be more difficult of maintenance, but it will give us a better grade.

Q. The country is materially different, is it, than that to be penetrated by the line to Coos Bay?

A. Yes, sir.

Q. The Southern Pacific is now building, as I understand, to Coos Bay?

A. They are building at right angles to the coast, yes, at Coos Bay.

Q. Now, as you come farther down the coast, does the country get more difficult?

A. Oh, I can't say that. They are both difficult.

908 Q. The difficulties, then, are evidently not insurmountable because the Southern Pacific is now building the line from Coos Bay to Roseburg?

A. They are not insurmountable, no, except that it is very costly construction.

Q. Except that it is very costly construction. For that reason you went in together rather than to both build up there and compete with each other?

A. Yes, sir.

Mr. SEVERANCE. I think that is all. I would like to have Mr. Bissell, Captain Payson, come here. I want to inquire into property conditions, if he can come this afternoon.

Commissioner LANE. I can adjourn at this time, if you desire it, before you begin the examination of Captain Payson, Judge Lovett.

By Mr. LOVETT:

Q. I have but a few questions and I can ask them now. These lines sold by the Atchison, or which were subsequently merged into the Northwestern Pacific Railroad Company, were wholly in the State of California, were they?

A. Wholly within the State of California.

Q. I believe you testified that they have no connection with any other railroad lines?

A. Except—no other railroad line extending out of the State of California.

Q. Well, I am speaking now of railroad lines extending out of the State of California.

Commissioner LANE. That is not literally true, Judge. The Northwestern Pacific, as I understand it, has a connection which crosses over through little Sonoma Valley into Napa, and directly

909 over into Solano County, and thence to the main line of the Southern Pacific.

Mr. LOVETT. Yes, your honor, but I was only asking about the two companies that the Atchison control.

Commissioner LANE. The Atchison?

Q. Yes. Neither of the companies that the Atchison controlled and put into this consolidated company had any rail connection at all, did they?

A. No, sir.

Q. Their only outlet was by boat?

A. Their only outlet was by boat.

Q. The Southern Pacific lines that were consolidated with the Atchison lines, and into the Northwestern Pacific Railroad Company, were also within the State of California, were they not?

A. Entirely within the State of California.

Q. Was it your understanding that those lines were consolidated under the laws of California?

A. That is my understanding.

Q. You testified to some arrangement with some line of boats belonging to this coast road. I did not catch the name.

A. The Fort Bragg & Southeastern.

Q. The Fort Bragg & Southeastern?

A. The Fort Bragg & Southeastern, yes, sir.

Q. It connected with a line of boats at Arcata?

A. At Albion.

Q. The Fort Bragg & Southeastern?

A. Yes, sir; that was it.

Q. Did that line, the Fort Bragg & Southeastern, do any business except haul logs for the mills?

A. Practically none; a few little supplies for the camps, but practically its entire business is the hauling of logs for the mills, and lumber from one mill that is established on it.

910 Q. There is one mill out on the line?

A. There is one mill out on the line, yes, sir.

Q. These lines controlled by the Atchison were not, as they existed at the time of the merger, competing in any sense with the Southern Pacific lines, were they?

A. Not at all.

Q. When the links necessary to connect them are completed, the effect then will be to give those lines an outlet to California, the rest of it?

A. To California and the East.

Q. If the Southern Pacific had completed its lines to a connection with the Atchison, practically the same arrangement might have been effected by the ordinary trackage contract, might it not?

A. Quite so.

Q. Just as at Mojave?

A. Just as at Mojave, yes, sir.

Mr. LOVETT. I think that is all.

By Mr. SEVERANCE:

Q. Except that in the case of the Mojave track, as I understand it, you say there is no local traffic?

A. I testified to the same thing as regards the country between Willits and the southern end of our line. I said we didn't get into the timber until we reached the southern end of Humboldt Bay.

Q. Then there would be no traffic there?

A. Very little. It is a stock country.

Q. How is that?

A. A stock country; a cattle country.

Q. Does that not constitute rather a profitable line?

A. Yes, sir; but it is a cattle country that requires so much country to sustain a few cattle that the business is not large. There is very little business, in other words, between the present ends of the

911 proposed road. You go 20 miles south of the present end of the properties about Humboldt Bay and you have got about out of the timber, and then from there on down to Willits, the end of the Southern Pacific properties on the north, there is very little business.

Q. You would not compare that, would you, with the country between Mojave and Bakersfield?

A. Well, there is not so very much difference, so far as I have seen it.

Q. There is not much. You have been over it, have you?

A. I have been over it several times.

Q. And the only traffic going out of the country is live stock?

A. There will be very little of that. The business of the road will be transporting lumber products from Humboldt Bay across that intervening country.

Q. Counsel asked you if these lines were not all within the State of California. That is true, of course, but after they are connected up with the main lines of the Southern Pacific and the Santa Fe, they will become part of interstate roads, just the same as any other line of track in the State, will they not?

A. That is true.

Q. The lumber traffic would move from that country directly through to the east over your lines?

A. Yes, sir.

Q. You expect it to do so.

Mr. SEVERANCE. I think that is all.

By Mr. LOVETT:

Q. Your understanding is that the ownership of this line is to be retained in the Northwestern Pacific Railroad Company, and not merged with the Atchison or the Southern Pacific?

A. That is my understanding.

912 Mr. SEVERANCE. You understood, did you not, also, that half the stock is to be owned by each of these companies?

WITNESS. I did, and so stated, I think.

Mr. SEVERANCE. Yes, that is what I thought. I believe that is a practical ownership.

913 Mr. SEVERANCE. May it please your Honor, we have just put into the record the testimony of Captain A. H. Payson, given in San Francisco. He referred in his testimony to certain contracts made in New York with reference to the Northwestern Pacific Railroad Company, a corporation which was incorporated jointly by the Southern Pacific and the Santa Fe. Judge Lovett has furnished us with copies of those contracts which, it is stipulated, may be offered in lieu of the production of the originals, with the same effect. I will therefore offer the following exhibits, being the agreements I have mentioned, viz:

Complainant's Exhibit 75 (Payson), an agreement between the Southern Pacific Company and The Atchison, Topeka and Santa Fe

Railway Company, relating to various railways in Northwestern California, dated December 7, 1906;

Complainant's Exhibit 76 (Payson), an agreement between the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Northwestern Pacific Railroad Company, for sale to the Northwestern Pacific Railway Company, etc., dated December 7, 1906;

Complainant's Exhibit 77 (Payson), an agreement between the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Northwestern Pacific Railroad Company, giving the right to prevent default under mortgages, dated March 12, 1907;

Complainant's Exhibit 78 (Payson), Trust Agreement, between Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and The Farmers' Loan and Trust Company, relating to stock of the Northwestern Pacific Railroad Company, dated March 30, 1907.

914 Mr. LOVETT. The defendants object to so much of the testimony of the witness Payson as relates to the agreements just mentioned, and also objects to each of the agreements offered upon the ground that each of the corporations owning the railroad referred to in the agreements was incorporated in the State of California, and that all the lines of railroad covered by the agreements were situated wholly within the State of California, and that the consolidation of these lines and these agreements were authorized under the laws of the State of California.

It is agreed that the objection just made may stand as to each question and answer relating to the subject matter of the objection, with the same effect as though it was repeated as to each question and each answer and as to each agreement.

Mr. LOVETT. I will add to my objection, if your Honor please, that the contracts are immaterial and the testimony of the witness Payson is immaterial.

915 Complainant's Exhibit 75 Payson is as follows:

COMPLAINANT'S EXHIBIT 75. (Payson.)

SOUTHERN PACIFIC COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

AGREEMENT RELATING TO VARIOUS RAILWAYS IN NORTHWESTERN CALIFORNIA. DATED DECEMBER 7, 1906.

Agreement, Made this seventh day of December, 1906, between Southern Pacific Company (herein called the "Southern Company"), a corporation of the State of Kentucky, party of the first part; and

The Atchison, Topeka and Santa Fe Railway Company (herein called the "Atchison Company"), a corporation of the State of Kansas, party of the second part.

Whereas, the Southern Company owns or controls:

(a) All the outstanding shares of the capital stock and the notes and other floating debt, described in "Schedule 1" hereto attached, of the California Northwestern Railway Company;

(b) All the outstanding shares of the capital stock and the notes and other floating debt, described in "Schedule 1" hereto attached, of the San Francisco and North Pacific Railway Company;

916 (c) All the outstanding shares of the capital stock and the bonds, notes and other floating debt, described in "Schedule 1" hereto attached, of the Eureka and Klamath River Railway Company; and

(d) All the outstanding shares of the capital stock and the bonds, notes and other floating debt, described in "Schedule 1" hereto attached, of the North Shore Railroad Company.

There are also outstanding in the hands of the public and not owned or controlled by the Southern Company, First Mortgage Five Per Cent. Bonds of said California Northwestern Railway Company, due 1928, amounting to $985,000; First Mortgage Five Per Cent. Bonds of said San Francisco and North Pacific Railway Company, due 1919, amounting to $3,880,000; and General Mortgage Bonds of the North Pacific Coast Railroad Company, which formerly owned the property now owned by the North Shore Railroad Company, due January 1, 1912, amounting to $1,498,000; and

Whereas, the Atchison Company owns or controls:

(a) All the outstanding shares of the capital stock and the notes and other floating debt, described in "Schedule 1" hereto attached, of the San Francisco and Northwestern Railway Company;

(b) First Mortgage Six Per Cent. Bonds due in 1903 of the Eel River and Eureka Railroad Company amounting to $149,000, which are secured by mortgage upon part of the railway and property now owned by the San Francisco and Northwestern Railway Company; and

917 (c) All the outstanding shares of the capital stock and the notes and other floating debt, described in "Schedule 1" hereto attached, of the Fort Bragg and Southeastern Railway Company.

There are also outstanding in the hands of the public and not owned or controlled by the Atchison Company Five Per Cent. Bonds of the Eel River and Eureka Railway Company, due 1914, amounting to $313,000, such bonds being secured by mortgage on part of the railway and property now owned by said San Francisco and Northwestern Railway Company; and

Whereas, the Southern Company and the Atchison Company are of the opinion that it is desirable to vest in one corporation the lines of railway and properties of the California Northwestern Railway Company, the San Francisco and North Pacific Railway Company,

the North Shore Railroad Company, the Eureka and Klamath River Railway Company, the San Francisco and Northwestern Railway Company and the Fort Bragg and Southeastern Railway Company, and to cause to be constructed a line of railway connecting the railways of the California Northwestern Railway Company and of the San Francisco and North Pacific Railway Company with the railway of the San Francisco and Northwestern Railway Company, and a line of railway connecting the railway of the Fort Bragg and Southeastern Railway Company with the railway of the San Francisco and North Pacific Railway Company, and other extensions and branch lines in Mendocino and Humboldt counties, and as hereinafter provided a branch line into Lake County, to the end that the said counties may be furnished with better railway transportation facilities and that their natural resources may be further developed; but on account of the great cost of construction of
918 such extensions and branches and the necessity of operating said lines of railway together as one property, it is believed that such new construction cannot be undertaken profitably and advantageously except with the aid and co-operation of the Southern Company and the Atchison Company, as herein provided; and

Whereas, the Southern Company and the Atchison Company have agreed, as hereinafter provided, to sell and transfer to a new corporation to be organized as a railroad company the said stocks, bonds and indebtedness of said several companies owned or controlled by the Southern Company and the Atchison Company, respectively, and that the Southern Company and the Atchison Company shall each own a beneficial interest in one-half of the shares of the capital stock of such new corporation, to the end that, by consolidation of such new corporation with said several companies hereinbefore mentioned, the railways and properties of said several companies and of said new corporation shall be vested in one consolidated corporation, by which such extensions and branches may be built, and that the Southern Company and the Atchison Company shall each own a beneficial interest in one-half of the shares of the capital stock of said consolidated corporation, less the number of shares required to qualify directors.

Now, therefore, it is mutually agreed by and between the parties hereto as follows, viz:

ARTICLE I.

The Southern Company and the Atchison Company will cause such new corporation to be organized. Its articles of incor-
919 poration and by-laws and the selection of its first board of directors shall be approved of by the Southern Company and the Atchison Company, and each of said companies respectively shall cause to be subscribed for and paid in five hundred thousand dollars par value of the capital stock of such new corporation. The Southern Company and the Atchison Company thereupon will exe-

cute an agreement with such new corporation, substantially of the tenor of the draft agreement marked "Schedule 1" hereto attached, and will respectively sell and transfer to such new corporation, as provided in Article I. and Article II. of said agreement (Schedule 1), the stocks, bonds, and indebtedness therein described.

ARTICLE II.

The Southern Company and the Atchison Company as stockholders in such new corporation will co-operate in effecting the consolidation provided for in said agreement (Schedule 1). The proceedings and papers of consolidation, including the articles of incorporation and consolidation, and the by-laws of the consolidated corporation, and the selection of its first board of directors shall be approved of by the Southern Company and the Atchison Company.

ARTICLE III.

The Southern Company and the Atchison Company forthwith, upon the issue to them respectively of the shares of the capital stock of such consolidated corporation, and upon the execution of the mortgage or deed of trust to be executed by such consolidated corporation as provided in said agreement (Schedule 1), will execute an agreement with The Farmers' Loan and Trust Company, a
920 corporation of the State of New York, of the tenor of "Schedule 2" hereto attached, and will transfer and deliver the certificates for such shares of capital stock, duly endorsed for transfer for the purpose of securing the performance of said agreement, Schedule 2.

ARTICLE IV.

If either the Southern Company or the Atchison Company shall so desire, such consolidated corporation shall construct and operate a branch line to a point at or near the Lakes in Lake County.

In witness whereof, each of the parties hereto has caused these presents to be signed by its President or a Vice-President and its corporate seal to be hereto affixed and attested by its Secretary or Assistant Secretary the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By E. H. HARRIMAN, *President.*

(Seal S. P. Co.)
Attest:
ALEX. MILLAR, *Secretary.*

THE ATCHISON, TOPEKA AND SANTA FE RAILROAD COMPANY,
By E. P. RIPLEY, *President.*

(Seal The A., T. & S. F. Ry. Co.)
Attest:
L. C. DEMING, *Asst. Secretary.*

921 Complainant's Exhibit 76 is as follows:

COMPLAINANT'S EXHIBIT 76.

SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND NORTHWESTERN PACIFIC RAILWAY COMPANY.

AGREEMENT FOR SALE TO THE NORTHWESTERN PACIFIC RAILWAY COMPANY, ETC.—DATED DECEMBER 7, 1906.

Agreement, Made this seventh day of December, 1906, between Southern Pacific Company (herein called the "Southern Company"), a corporation of the State of Kentucky, party of the first part;

The Atchison, Topeka and Santa Fe Railway Company (herein called the "Atchison Company"), a corporation of the State of Kansas, party of the second part; and

Northwestern Pacific Railway Company (herein called the "California Company"), a corporation of the State of California, party of the third part.

Whereas, the Southern Company owns or controls:

(a) All the outstanding shares of the capital stock and the notes and other floating debt, hereinafter described, of the California Northwestern Railway Company;

922 (b) All the outstanding shares of the capital stock and the notes and other floating debt, hereinafter described, of the San Francisco and North Pacific Railway Company;

(c) All the outstanding shares of the capital stock and the bonds, notes and other floating debt, hereinafter described, of the Eureka and Klamath River Railway Company; and

(d) All the outstanding shares of the capital stock and the bonds, notes and other floating debt, hereinafter described, of the North Shore Railroad Company.

There are also outstanding in the hands of the Public and not owned or controlled by the Southern Company first Mortgage Five Per Cent. Bonds of said California Northwestern Railway Company, due 1928, amounting to $985,000; First Mortgage Five Per Cent. Bonds of said San Francisco and North Pacific Railway Company, due 1919, amounting to $3,880,000; and General Mortgage Bonds of the North Pacific Coast Railroad Company, which formerly owned the property now owned by the North Shore Railroad Company, due January 1, 1912, amounting to $1,498,000; and

Whereas, the Atchison Company owns or controls:

(a) All the outstanding shares of the capital stock and the notes and other floating debt, hereinafter described, of the San Francisco and Northwestern Railway Company;

(b) First Mortgage Six Per Cent. Bonds due in 1903 of the Eel River and Eureka Railroad Company amounting to $149,000, which are secured by mortgage upon part of the railway and property now

owned by the San Francisco and Northwestern Railway Company; and

(c) All the outstanding shares of the capital stock and the
923 floating debt, hereinafter described, of the Fort Bragg and Southeastern Railway Company.

There are also outstanding in the hands of the public and not owned or controlled by the Atchison Company Five Per Cent. Bonds of the Eel River and Eureka Railway Company, due 1914, amounting to $313,000, such bonds being secured by mortgage on part of the railway and property now owned by said San Francisco and Northwestern Railway Company; and

Whereas, the parties hereto desire to vest in one consolidated corporation the railways and properties of the California Northwestern Railway Company, the San Francisco and North Pacific Railway Company, the Eureka and Klamath River Railway Company, the North Shore Railroad Company, the San Francisco and Northwestern Railway Company and the Fort Bragg and Southeastern Railway Company, and to cause to be constructed a line of railway connecting the railways of the California Northwestern Railway Company and of the San Francisco and North Pacific Railway Company with the railway of the San Francisco and Northwestern Railway Company, and a line of railway connecting the railway of the Fort Bragg and Southeastern Railway Company with the railway of the San Francisco and North Pacific Railway Company, and other extensions and branch lines in Mendocino and Humboldt counties, and, if either the Atchison Company or the Southern Company so desires, a branch line to a point at or near the Lakes, in Lake County, to the end that the said counties may be furnished with better railway transportation facilities and that their natural resources may be further developed; but on account of the great cost of construction of such extensions and branches and the necessity of operating
924 said lines of railway together as one property, it is believed that such new construction cannot be undertaken profitably and advantageously except with the aid and cooperation of the Southern Company and the Atchison Company, as herein provided; and

Whereas, the parties hereto have therefore agreed that the Southern Company and the Atchison Company, severally and respectively, shall sell and transfer to the California Company, on the terms herein stated, the said stocks, bonds and indebtedness of said several companies owned or controlled by the Southern Company and the Atchison Company, respectively, such sale being a first step in carrying out a plan to vest said railways and properties in one consolidated corporation, and to enable it to build such extensions and branches and to furnish additional railway transportation facilities in said counties of Mendocino and Humboldt and as herein provided in Lake County; and

Whereas, the authorized capital stock of the California Company is thirty-five million dollars ($35,000,000), and the Southern Com-

pany and the Atchison Company, each respectively, has caused to be subscribed and paid in five hundred thousand dollars ($500,000), par value, of such authorized capital stock:

Now, therefore, it is mutually agreed by and between the parties hereto as follows, viz.:

ARTICLE I.

The Southern Company agrees to sell and transfer to the California Company, or to its nominee or nominees,

15,660 shares of the capital stock of said California Northwestern Railway Company, being all the shares of the capital stock of said company issued and outstanding,

925 60,000 shares of the capital stock of said San Francisco and North Pacific Railway Company, being all the shares of the capital stock of said company issued and outstanding,

60,000 shares of the capital stock of said North Shore Railroad Company, being all the shares of the capital of said company issued and outstanding,

5,000 shares of the capital stock of said Eureka and Klamath River Railway Company, being all the shares of the capital stock of said company issued and outstanding,

First Mortgage 5 Per Cent. Gold Bonds of said North Shore Railroad Company, issued under and secured by its mortgage and deed of trust, dated May 1, 1902, to Mercantile Trust Company of San Francisco, as Trustee, heretofore declared due under the provisions of the mortgage securing the same because of default in payment of the interest thereon and now held by said Mercantile Trust Company of San Francisco for the Southern Company to the amount of $2,000,000.

Notes of said North Shore Railroad Company, payable to the order of John Martin, J. W. Foster and Southern Company, respectively, now owned by Southern Pacific Company, aggregating, exclusive of interest, $1,161,450,

All indebtedness of said Eureka and Klamath River Railway Company, due the Southern Company.

The California Company agrees that upon the transfer to it, or its nominee or nominees, of the said shares of capital stock, bonds, notes and other floating debt of said several companies, it, the California Company, will pay to the Southern Company the sum of

926 twenty-three million eight hundred and ninety-four thousand nine hundred and sixty-eight dollars and thirty-seven cents ($23,894,968.37), of which sum two million eighty-nine thousand two hundred and thirty-two dollars and nine cents ($2,089,232.09) shall be paid in cash; seventeen million dollars ($17,000,000) shall be paid by the issue to the Southern Company or its nominee of seventeen million dollars ($17,000,000) in the fully paid-up shares of the capital stock of the California Company and the remaining four million eight hundred and five thousand seven hundred and thirty-six dollars and twenty-eight cents ($4,805,736.28) by the issue and delivery to the Southern Company of the promissory notes of the California Com-

pany payable on or before the expiration of one year from the date thereof, with interest at the rate of four per cent. per annum.

ARTICLE II.

The Atchison Company agrees to sell and transfer to the California Company, or to its nominee or nominees,

3,000 shares of the capital stock of the San Francisco and Northwestern Railway Company, being all the shares of the capital stock of said company issued and outstanding.

1,000 shares of the capital stock of the Fort Bragg and Southeastern Railway Company, being all the shares of the capital stock of said company issued and outstanding.

All notes and floating debt of the San Francisco and Northwestern Railway Company held by the Atchison Company, the aggregate principal thereof being $1,520,000.

First Mortgage Six Per Cent. Bonds due in 1903 of the Eel River and Eureka Railroad Company amounting to $149,000, which are secured by mortgage upon part of the railway and prop-
927 erty now owned by the San Francisco and Northwestern Railway Company.

All floating debt of the Fort Bragg and Southeastern Railway Company held by the Atchison Company.

The Atchison Company further agrees to pay to the California Company the sum of one million eighty-nine thousand two hundred and thirty-two dollars and nine cents ($1,089,232.09) in cash.

The California Company agrees that upon the transfer to it, or its nominee or nominees, of the said shares of capital stock, bonds, notes, and other floating debt of said several companies, and upon payment of said sum in cash, it, the California Company, will pay to the Atchison Company the sum of seventeen million dollars ($17,000,000), which shall be paid by the issue to the Atchison Company or its nominees of seventeen million dollars ($17,000,000) in the fully paid up shares of the capital stock of the California Company.

ARTICLE III.

It is further agreed that as speedily as is practicable after the sale and transfer pursuant to Articles I. and II. hereof of the stocks, bonds and indebtedness of the several companies in said articles mentioned, the said California Company shall consolidate with the California Northwestern Railway Company, the San Francisco and North Pacific Railway Company, the North Shore Railroad Company, the Eureka and Klamath River Railway Company, the San Francisco and Northwestern Railway Company and the Fort Bragg and South-
eastern Railway Company, under and in pursuance of the laws
928 of the State of California, to the end that by such consolidation the title to the railways and all of the properties of said constituent companies shall be acquired by and vested in one consolidated corporation, the capital stock of which shall be thirty-five million

dollars ($35,000,000) and shall be issued share for share to the stockholders of the California Company.

It is further agreed that promptly after such consolidation shall have been effected the consolidated corporation shall execute a mortgage or deed of trust covering the railways so acquired, and the additional properties to be constructed and acquired as set forth in said mortgage or deed of trust, which shall be substantially of the tenor of "Exhibit A" hereto attached.

It is further agreed that such consolidated corporation shall cause to be paid the said promissory notes to be issued to the Southern Company pursuant to Article I. hereof out of the proceeds of the sale of the bonds to be issued, certified and delivered in pursuance of Section 2, Article Second, of said mortgage or deed of trust.

It is further agreed that as soon as is practicable after the execution of said mortgage or deed of trust (Exhibit A), the Southern Company, the Atchison Company and such consolidated corporation shall execute an agreement substantially of the tenor of "Exhibit B," hereto attached, giving the right to the Southern Company and the Atchison Company to make certain payments to prevent a default under said mortgage or deed of trust of such consolidated corporation or under any other mortgage or deed of trust upon any of its properties.

929 In witness whereof, each of the parties hereto of the first and second part, pursuant to a resolution of its Board of Directors, has caused these presents to be signed by its President or a Vice-President, and its corporate seal to be hereunto affixed and attested by its Secretary or an Assistant Secretary, and the party of the third part, pursuant to a resolution of the Board of Directors has caused these presents to be signed and its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By E. H. HARRIMAN, *President.*
(Seal S. P. Co.)
Attest:
ALEX. MILLAR, *Secretary.*

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By E. P. RIPLEY, *President.*
(Seal The A., T. & S. F. Ry. Co.)
Attest:
L. C. DEMING, *Asst. Secretary.*

NORTHWESTERN PACIFIC RAILWAY COMPANY,
By JOS. HELLEN, *Assistant Secretary.*
(Seal N. W. P. Ry. Co.)
Attest:
JOS. HELLEN, *Assistant Secretary.*

930 Complainant's Exhibit 77 is as follows:

COMPLAINANT'S EXHIBIT 77.

SOUTHERN PACIFIC COMPANY, OF THE FIRST PART, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, OF THE SECOND PART, AND NORTHWESTERN PACIFIC RAILROAD COMPANY, OF THE THIRD PART.

AGREEMENT GIVING THE RIGHT TO PREVENT DEFAULT UNDER MORTGAGES. DATED, MARCH 12, 1907.

Agreement, made this 12th day of March, 1907, between Southern Pacific Company (herein called "Southern Company"), a corporation of the State of Kentucky, party of the first part;

The Atchison, Topeka and Santa Fe Railway Company (herein called "Atchison Company"), a corporation of the State of Kansas, party of the second part; and

Northwestern Pacific Railroad Company (herein called "California Company"), a corporation of the State of California, party of the third part.

Whereas, the Southern Company being the owner of the shares
931 of the capital stock of the California Northwestern Railway Company, the San Francisco and North Pacific Railway Company, the Eureka and Klamath River Railway Company, and the North Shore Railroad Company, and certain obligations of said several companies, and the Atchison Company being the owner of the shares of the capital stock of the San Francisco and Northwestern Railway Company and the Fort Bragg and Southeastern Railway Company, and certain obligations of said several companies, sold all said shares of capital stock and all said obligations to the Northwestern Pacific Railway Company for the purpose of carrying out a plan to vest in one consolidated corporation the railways and properties of said several railway companies and to cause to be constructed a line of railway connecting the railways of the California Northwestern Railway Company and of the San Francisco and North Pacific Railway Company with the railway of the San Francisco and Northwestern Railway Company and a line of railway connecting the line of railway of the Fort Bragg and Southeastern Railway Company with the railway of the San Francisco and North Pacific Railway Company, and other extensions and branch lines in Mendocino and Humboldt Counties, and if either the Southern Company or the Atchison Company so desires a branch line to a point at or near the Lakes, in Lake County, to the end that the said counties may be furnished with better transportation facilities and that their natural resources may be further developed; and

Whereas, it was part of such plan that the railway company formed by such consolidation should execute a mortgage or deed of trust to

secure an issue of Thirty-five million dollars ($35,000,000), par
932 value, of the First and Refunding Mortgage Four and One-Half Per Cent. Gold Bonds of said Company, in order to provide the means of paying the obligations of said consolidated corporation and of providing for its future requirements; and

Whereas, the California Company is the consolidated corporation formed by the consolidation of said several companies, and has executed such mortgage or deed of trust to The Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee, to which mortgage or deed of trust reference is hereby made; and

Whereas, pursuant to such plan the Southern Company and the Atchison Company have each acquired 174,995 shares of the capital stock of the California Company; and

Whereas, it was one of the terms and conditions of such sale made by the Southern Company and the Atchison Company to the Northwestern Pacific Railway Company that forthwith after the formation of such consolidated corporation and the execution of its mortgage or deed of trust, an agreement substantially of the tenor of these presents should be executed by the Southern Company, the Atchison Company and the California Company, so as to enable the Southern Company and the Atchison Company to protect their respective interests in the capital stock of the California Company against a failure on the part of the California Company to pay any sum due and payable under its said mortgage or deed of trust or under any other mortgage or deed of trust upon any of its properties;

Now, therefore, in consideration of the premises, and of one
933 dollar by each party to the other paid, the receipt whereof is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows, viz.:

In case the California Company at any time or times shall fail to pay any sum that shall become due for principal or interest of any bonds secured by its said mortgage or deed of trust, or by any other mortgage or deed of trust that shall constitute a lien upon any property now or hereafter owned by the California Company, or any other sum payable under any of said mortgages, then the Southern Company and the Atchison Company, each respectively in its discretion, shall be entitled to deposit, upon special trust, as hereinafter provided, with the trustee of said mortgage or deed of trust of the California Company, one-half of such sum as the California Company shall fail to pay; and if either the Southern Company or the Atchison Company shall make such deposit of one-half of said sum but the other of said companies shall fail, on or before the following day to make a similar deposit of the other half of such sum, then the Company which deposited one-half of such sum shall be entitled, in its discretion, to deposit the remaining half.

Every such deposit shall be made upon special trust for the payment, for account of the California Company, of the particular sum or sums that shall have become due or payable by the California Company as aforesaid; and for each sum deposited by either of said two

companies as aforesaid the trustee shall deliver to such Company a receipt or receipts specifying the amount and date of such deposit and the purpose for which such deposit was made.

934 The California Company covenants and agrees that in case either of said two Companies shall deposit with said trustee any sum or sums as aforesaid, it, the California Company, will repay to such Company, or its assigns, at the time and in the manner hereinafter specified, the sum or sums so deposited, and until the repayment of the principal of such deposit will pay interest thereon at the rate of six per cent. per annum, such interest to be payable semi-anually on the first day of March and the first day of September in each year.

Every such payment of interest and every such repayment of principal shall be made at the office of said trustee upon presentation of the respective receipts issued by said trustee for such deposits. Each payment of interest upon any deposit and each repayment of part of the principal of any deposit shall be endorsed upon the receipt issued therefor, and upon repayment in full of the principal of any deposit and the interest due thereon, the receipt issued for such deposit shall be marked "paid" and be surrendered.

The California Company agrees that before repaying the principal of any deposit it will pay all semi-annual installments of interest that theretofore shall have become due upon all deposits that shall have been made; that it will pay all such installments of interest in the order in which they matured, and that if it shall pay only part of the installments of interest maturing on any date on all such deposits, then it will pay such installments pro rata.

The principal of each deposit shall be repayable from time to time and at any time in the discretion of the California Company on or before the expiration of three years from the date

935 of the deposit; but the California Company covenants and agrees that—

(a) Whenever there shall be due to either the Southern Company or the Atchison Company a greater sum than is due to the other of said two companies on account of the principal of deposits made hereunder, it will first repay the excess to the company to which the greater sum is due, so that the sums due to said two companies for the principal of deposits shall be equalized.

(b) When the sums due to said two companies for principal of deposits shall be equal, it will repay the respective deposits in the order in which the sums for the payment whereof such deposits were made became due, and that it will repay pro rata the deposits made by both of said companies in case the deposits made for the payment of any sum shall be repaid only in part.

All rights hereunder of each of the parties of the first and second part respectively shall remain in full force and effect so long as such party shall retain any beneficial interest in said shares in the California Company deposited by such party with the Trustee or in a majority thereof.

In testimony whereof, each of the parties hereto has caused these presents to be signed by its President or Vice-President or an Assistant Secretary and its corporate seal to be hereunto affixed
936 and attested by its Secretary or an Assistant Secretary the day and year first above written.

SOUTHERN PACIFIC COMPANY,
(Seal S. P. Co.) By E. H. HARRIMAN, *President.*
Attest:
ALEX. MILLAR,
Secretary.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By E. P. RIPLEY, *President.*
(Seal A., T. & S. F. Ry. Co.)
Attest:
W. J. EDDY,
Asst. Secretary.

NORTHWESTERN PACIFIC RAILROAD COMPANY,
By A. H. PAYSON, *President.*
(Seal N. W. P. R. R. Co.)
Attest:
J. L. WILLCUTT,
Secretary.

937 Complainant's Exhibit 78 is as follows:

COMPLAINANT'S EXHIBIT 78.

SOUTHERN PACIFIC COMPANY, OF THE FIRST PART, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, OF THE SECOND PART, AND THE FARMERS' LOAN AND TRUST COMPANY, OF THE THIRD PART.

TRUST AGREEMENT, RELATING TO STOCK OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY. DATED, MARCH 30, 1907.

An agreement, made this 30th day of March, A. D. 1907, between Southern Pacific Company (herein called the "Southern Company"), a corporation of the State of Kentucky, party of the first part;

The Atchison, Topeka and Santa Fe Railway Company (herein called the "Atchison Company"), a corporation of the State of Kansas, party of the second part; and

The Farmers' Loan and Trust Company (herein called the "Trustee"), a corporation of the State of New York, party of the third part, witnesseth:

938 Whereas, the Northwestern Pacific Railroad Company (herein called the "California Company"), a corporation of the State of California, has agreed to execute to The Farmers' Loan

and Trust Company, as trustee, a certain mortgage or deed of trust to secure an issue of $35,000,000, par value, of the First and Refunding Mortgage Four and one-half Per Cent. Gold Bonds of said California Company, a draft of which mortgage is hereto attached marked "Schedule A;" and

Whereas, the Southern Company, the Atchison Company and the California Company have agreed to execute a certain agreement dated March 12, 1907 (a draft of which agreement marked "Schedule B" is hereto attached), giving the right to the Southern Company and the Atchison Company to make certain payments to prevent a default under said mortgage or deed of trust of the California Company or under any other mortgage or deed of trust upon any of its properties; and

Whereas, the Southern Company and the Atchison Company have each acquired 174,995 shares of the capital stock of the California Company and have mutually agreed to assign and transfer to the Trustee for the purpose of securing the due and punctual performance of this agreement by them respectively, all said shares of the capital stock of the California Company acquired by them respectively;

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

ARTICLE I.

SECTION 1. This agreement shall be executed by the parties in three uniform originals, one of which shall be delivered to each of the parties.

939 SECTION 2. At the time of the execution hereof the Southern Company has delivered to the Trustee the certificates for 174,995 shares and the Atchison Company has delivered to the Trustee the certificates for 174,995 shares of the capital stock of the California Company, such certificates being accompanied, in each case, by instruments of assignment and powers of attorney for the transfer of such shares upon the books of the California Company into the name of the Trustee as hereinafter provided.

SECTION 3. The Southern Company and the Atchison Company, respectively, hereby sell, assign and transfer to the Trustee the shares in the California Company represented by said certificates delivered by them respectively to the Trustee; and the Trustee shall have and be entitled to exercise all the rights and powers of a stockholder in respect of the said shares, including the right to collect and receive all dividends that shall be declared upon such shares and the right to vote upon such shares at all meetings of stockholders of the California Company.

SECTION 4. The Trustee, forthwith, shall cause the shares represented by the certificates delivered by the Southern Company to be transferred upon the books of the California Company into the name of the Trustee, as trustee for the Southern Company subject

to the provisions of this agreement, and shall cause the shares represented by the certificates delivered by the Atchison Company, to be transferred upon the books of the California Company into the name of the Trustee, as trustee for the Atchison Company subject to the provisions of this agreement.

SECTION 5. The Trustee shall execute and deliver to the Southern Company and the Atchison Company respectively trust
940 receipts for the shares delivered by them to the Trustee, each of such trust receipts to be substantially of the following tenor, viz.:

THE FARMERS' LOAN AND TRUST COMPANY.

Trust Receipt For Shares in the Northwestern Pacific Railroad Company.

This is to certify that the Company has delivered to the undersigned Trust Company the certificates for shares of the capital stock of the Northwestern Pacific Railroad Company, pursuant to a certain trust agreement dated March , 1907, between the Southern Pacific Company, of the first part, The Atchison, Topeka and Santa Fe Railway Company, of the second part, and the undersigned Trust Company, of the third part, and that said shares are now held by the undersigned Trust Company in trust for subject to the terms and conditions of said agreement. The interest represented by this trust receipt is assignable only, upon surrender and cancellation of this receipt accompanied by delivery to the undersigned Trust Company of an instrument of assignment duly executed by the registered holder of this receipt and registration of the assignment upon the books of the undersigned, whereupon a new trust receipt in similar form will be issued to the assignee. No assignment or transfer shall be operative for any purpose unless made and registered as aforesaid nor unless a new trust receipt shall have been issued by the undersigned to the transferee. Every transfer shall vest in the transferee only the interest of the prior registered holder subject to all the terms and provisions of said agreement.

941 In Witness Whereof, The Farmers' Loan and Trust Company has caused this trust receipt to be signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary this day of .

The FARMERS' LOAN AND TRUST COMPANY,

By

President.

Attest:

Secretary.

The interest represented by each trust receipt shall be indivisible, and no holder of either trust receipt shall have power to divide up

or split the interest represented thereby or to make any transfer or assignment except an absolute transfer in the manner aforesaid of the entire interest represented by the trust receipt.

Either trust receipt and all the rights of the holder thereof under this agreement shall be transferable by surrender of the trust receipt to the Trustee and delivery to the Trustee of an instrument of assignment duly executed by the registered holder and registration of the transfer upon the books of the Trustee, whereupon a new trust receipt shall be issued by the Trustee to the transferee. Upon completion of such transfer the transferee shall be vested with all the rights of the transferor under this agreement. The term "Southern Company," when hereinafter used, shall be held to mean the Southern Company or the registered transferee, as aforesaid, of its interest hereunder, and the term "Atchison Company," when here-
942 inafter used, shall be held to mean the Atchison Company or the registered transferee, as aforesaid, of its interest hereunder. No transfer of either trust receipt or of any interest therein or of any interest in any shares represented thereby shall be valid for any purpose unless completed in the manner aforesaid, nor unless a new trust receipt shall have been issued to the transferee. The registered holder for the time being of either of said trust receipts shall be deemed and treated for all purposes as the absolute owner thereof.

SECTION 6. All said shares in the California Company shall be held by the Trustee upon trust for the purposes and upon the terms and conditions herein expressed, until delivered, transferred or surrendered as herein provided.

ARTICLE II.

SECTION 1. All the provisions of sections 2 and 3 of this Article II. are subject to the provisions of Article V. hereof and are limited thereby.

SECTION 2. At each election of directors of the California Company to be held in an uneven calendar year, that is to say, in the year 1907 and in each alternate year thereafter, the Southern Company shall be entitled to select five and the Atchison Company shall be entitled to select four of the directors to be elected at such election; and at each election of directors of the California Company to be held in an even calendar year, that is to say, in the year 1908 and in each alternate year thereafter, the Atchison Company shall be entitled to select five and the Southern Company shall be entitled to select four of the directors to be elected at such election.

943 Whenever the Southern Company and the Atchison Company shall jointly in writing request the Trustee to execute a power of attorney or proxy to vote at any meeting of the stockholders of the California Company for the election of directors or for any other purpose, the Trustee shall execute and deliver, in accordance with such request, the power of attorney or proxy of the

Trustee to vote upon all or any of the shares held by the Trustee hereunder, such power of attorney or proxy to be of such tenor as may be indicated in such request.

If the Southern Company and the Atchison Company shall not have jointly requested the Trustee as aforesaid to execute its power of attorney or proxy to vote at a meeting of the stockholders that shall have been called for the election of directors, the Trustee, at such meeting, by any officer, agent or attorney selected by the Trustee, shall cast the votes upon all said shares by it held hereunder, so as to elect as directors five persons designated in writing by the Southern Company and four persons designated in writing by the Atchison Company if the election be held in an uneven calendar year, and so as to elect five persons designated in writing by the Atchison Company and four persons designated in writing by the Southern Company if the election be held in an even calendar year; but if either the Southern Company or the Atchison Company shall fail, prior to any election, to designate in writing to the Trustee the persons (to the number aforesaid) whom such company desires the Trustee to elect, then the Trustee shall elect, from persons chosen in its discretion, the number of directors which the Southern Company or the Atchison Company so failed to designate. Upon all
944 questions at such meeting other than the election of directors the Trustee shall vote as it may be requested in writing by the Southern Company upon the shares transferred by it to the Trustee, and as it may be requested in writing by the Atchison Company upon the shares transferred by it to the Trustee.

The voting power upon said shares shall always be exercised so that the board of directors of the California Company shall be elected annually and so that the Southern Company may select a majority of one of the board of directors to be elected in each uneven calendar year and that the Atchison Company may select a majority of one of the board of directors to be elected in each even calendar year.

The Southern Company and the Atchison Company mutually agree that in case a vacancy shall occur in the board of directors of the California Company through the death or resignation of a director, the remaining directors shall fill such vacancy by electing a person to be designated in writing by the Railway Company which originally selected the director who died or resigned.

SECTION 3. Prior to each meeting of the stockholders of the California Company at which directors are not to be elected, the Trustee, upon request of the Southern Company or the Atchison Company, shall execute and deliver to the nominee of each of said companies a power of attorney or proxy to vote at such meeting upon the shares transferred by such company to the Trustee.

SECTION 4. If and so long as not less than two-thirds of the
945 shares of the capital stock of the California Company shall be held by the Trustee hereunder, neither the Southern Company nor the Atchison Company nor the Trustee, except with the written

consent of both the Southern Company and the Atchison Company, shall authorize or assent to, or exercise the voting power upon any of the deposited shares to authorize or assent to:

(a) Any consolidation or agreement of consolidation of the California Company with any other company;

(b) Any sale or lease, or agreement of sale or lease, of the railroad or any part of the railroad of the California Company, or any purchase or lease by the California Company of the railroad of any other company, or any purchase by the California Company of the shares of the capital stock of any other railway company;

(c) Any grant of trackage rights upon the line or any part of the line of the California Company or any grant of a right of user of any station or other property of said company for a period exceeding one year;

(d) Any increase or reduction of the present authorized capital stock of the California Company;

(e) Any increase or reduction of the number of directors of the California Company;

(f) Any alteration or amendment of the articles of incorporation of the California Company; or

(g) Any amendment, alteration or repeal of any of the by-laws of the California Company.

But this shall not be held to prohibit the exercise of the voting power upon said shares to authorize and direct whatever action
946 shall be necessary under the laws of California for the purpose of continuing or renewing the corporate existence of the California Company and to preserve unimpaired the franchises of the California Company and its right, title and interest in and to any property now owned by it or that hereafter shall be acquired by it.

SECTION 5. The Trustee may insert in any proxy or power of attorney executed by it under this agreement any provisions or limitations consistent with the provisions of this agreement that shall be deemed by the Trustee reasonable and proper for ensuring the performance of this agreement according to its true intent and purpose and of protecting the interests of the parties hereto.

SECTION 6. It is understood that in case any provision of this article shall not be legally enforceable, the good faith of the Southern Company and the Atchison Company is nevertheless pledged to the performance thereof.

ARTICLE III.

SECTION 1. It is understood and agreed by the Southern Company and the Atchison Company that the railway and property of the California Company shall be operated independently and for its own account and in its own interest.

SECTION 2. The Southern Company and the Atchison Company mutually agree that if and so long as not less than two-thirds of the capital stock of the California Company shall be held by the Trustee

hereunder, neither the Southern Company nor the Atchison Company, alone without the written consent of the other company, will assent to or be a party to or participate in any act or agreement of the California Company which will in any manner or under any
947 conditions discriminate between the Southern Company and the Atchison Company, or grant or extend to either of them greater rights, facilities or benefits than are granted or extended to the other.

ARTICLE IV.

The Trustee from time to time, upon demand of either the Southern Company or the Atchison Company, may sell and transfer to persons designated by such Company on such terms as the Trustee shall deem proper for the protection of the trust hereunder so many of the shares of stock in the California Company transferred by such Company to the Trustee and then held by it, as shall be required for the purpose of qualifying such persons for election as Directors of the California Company; provided, however, that the number of shares transferred hereunder at the request of either of said two companies and not retransferred to the Trustee shall never exceed one hundred shares; and provided further that if any shares transferred by either the Southern Company or the Atchison Company to the Trustee shall be sold or transferred by the Trustee under this Article, then the Trustee forthwith shall transfer to the other of said two companies, or its nominee, upon the like terms, a like number of the shares by it transferred to the Trustee, so that the Trustee shall at all times hold in trust hereunder exactly the same number of the shares transferred to the Trustee by each of said companies. It is understood that upon the retransfer to the Trustee of shares previously transferred under this Article, such retransferred shares shall be held in trust under this agreement as though they had not been transferred by the Trustee.

948 ARTICLE V.

In case the California Company shall fail to pay any sum that shall become due for principal or interest of any bonds secured by its said mortgage or deed of trust (Schedule A), or by any other mortgage or deed of trust that shall constitute a lien upon any property now or hereafter owned by the California Company, or any other sum payable under any of said mortgages, and either the Southern Company or the Atchison Company shall, pursuant to said agreement (Schedule B), deposit with said Trustee of said mortgage or deed of trust (Schedule A) one-half of such sum as the California Company shall fail to pay, and shall thereafter, pursuant to said agreement (Schedule B), deposit, upon the failure of the other of said two Companies to do so, the other one-half of said sum, then, unless and until the other of said two Companies shall have paid (as hereinafter authorized), or the California Company shall have repaid to the Com-

pany which made such deposit, such sum as will make equal the sums remaining due and payable by the California Company to the Southern Company and the Atchison Company, respectively, for the principal and interest of deposits made by them, respectively, under said agreement (Schedule B),

(a) the Company to which the greater amount is due from the California Company on account of deposits under said agreement (Schedule B) shall be entitled to vote upon all shares of the capital stock of the California Company transferred to and then held by the Trustee hereunder (including all such shares transferred to the Trustee by the Company to which the lesser amount is due from the California Company on account of deposits under said agreement)
949 at all meetings of the stockholders of the California Company for the election of directors and for all other purposes not in conflict with section 4 of Article II hereof, and the Trustee shall execute and deliver to such Company a power of attorney appointing such Company or any person or persons that shall be designated by such Company in writing, the attorney, agent and proxy of the Trustee, with power of substitution, to vote upon such shares at all such meetings of the stockholders of the California Company; and

(b) Subject to the provisions of section 3 of Article VI hereof, the Trustee shall apply any dividends that shall be received or collected by the Trustee on the shares in the California Company transferred to the Trustee by such Company to which the lesser amount is due as aforesaid, in paying, for account of such last-mentioned Company, to the Company to which the greater amount is due as aforesaid, such sum as will equalize the amounts due to both of said Companies on account of such deposits.

Whenever the sums due from the California Company to the Southern Company and to the Atchison Company for principal and interest of deposits made under said agreement (Schedule B) shall not be equal, the company to which the lesser amount is due shall be entitled at any time to pay to the company to which the greater amount is due one-half of the difference between the amounts due so as to equalize the amounts due to said companies respectively for deposits under said agreement; and at the time of any such payment the company making the same shall be entitled to receive from the other company a receipt, issued by the trustee under said
950 mortgage or deed of trust of the California Company, upon which there is then due from the California Company a sum equal to the payment thus made by the one company to the other, and such receipt shall be accompanied by an assignment thereof and of the claim against the California Company represented thereby.

Every such payment shall be made in the City of New York. The deposit by either the Atchison Company or the Southern Company with the Trustee hereunder of a sum of money upon special trust for the payment of any such difference to the other company shall be deemed a payment of such sum to the other company as of the date of the

hereunder, neither the Southern Company nor the Atchison Company, alone without the written consent of the other company, will assent to or be a party to or participate in any act or agreement of the California Company which will in any manner or under any
947 conditions discriminate between the Southern Company and the Atchison Company, or grant or extend to either of them greater rights, facilities or benefits than are granted or extended to the other.

ARTICLE IV.

The Trustee from time to time, upon demand of either the Southern Company or the Atchison Company, may sell and transfer to persons designated by such Company on such terms as the Trustee shall deem proper for the protection of the trust hereunder so many of the shares of stock in the California Company transferred by such Company to the Trustee and then held by it, as shall be required for the purpose of qualifying such persons for election as Directors of the California Company; provided, however, that the number of shares transferred hereunder at the request of either of said two companies and not retransferred to the Trustee shall never exceed one hundred shares; and provided further that if any shares transferred by either the Southern Company or the Atchison Company to the Trustee shall be sold or transferred by the Trustee under this Article, then the Trustee forthwith shall transfer to the other of said two companies, or its nominee, upon the like terms, a like number of the shares by it transferred to the Trustee, so that the Trustee shall at all times hold in trust hereunder exactly the same number of the shares transferred to the Trustee by each of said companies. It is understood that upon the retransfer to the Trustee of shares previously transferred under this Article, such retransferred shares shall be held in trust under this agreement as though they had not been transferred by the Trustee.

948 ARTICLE V.

In case the California Company shall fail to pay any sum that shall become due for principal or interest of any bonds secured by its said mortgage or deed of trust (Schedule A), or by any other mortgage or deed of trust that shall constitute a lien upon any property now or hereafter owned by the California Company, or any other sum payable under any of said mortgages, and either the Southern Company or the Atchison Company shall, pursuant to said agreement (Schedule B), deposit with said Trustee of said mortgage or deed of trust (Schedule A) one-half of such sum as the California Company shall fail to pay, and shall thereafter, pursuant to said agreement (Schedule B), deposit, upon the failure of the other of said two Companies to do so, the other one-half of said sum, then, unless and until the other of said two Companies shall have paid (as hereinafter authorized), or the California Company shall have repaid to the Com-

pany which made such deposit, such sum as will make equal the sums remaining due and payable by the California Company to the Southern Company and the Atchison Company, respectively, for the principal and interest of deposits made by them, respectively, under said agreement (Schedule B),

(a) the Company to which the greater amount is due from the California Company on account of deposits under said agreement (Schedule B) shall be entitled to vote upon all shares of the capital stock of the California Company transferred to and then held by the Trustee hereunder (including all such shares transferred to the Trustee by the Company to which the lesser amount is due from the California Company on account of deposits under said agreement)
949 at all meetings of the stockholders of the California Company for the election of directors and for all other purposes not in conflict with section 4 of Article II hereof, and the Trustee shall execute and deliver to such Company a power of attorney appointing such Company or any person or persons that shall be designated by such Company in writing, the attorney, agent and proxy of the Trustee, with power of substitution, to vote upon such shares at all such meetings of the stockholders of the California Company; and

(b) Subject to the provisions of section 3 of Article VI hereof, the Trustee shall apply any dividends that shall be received or collected by the Trustee on the shares in the California Company transferred to the Trustee by such Company to which the lesser amount is due as aforesaid, in paying, for account of such last-mentioned Company, to the Company to which the greater amount is due as aforesaid, such sum as will equalize the amounts due to both of said Companies on account of such deposits.

Whenever the sums due from the California Company to the Southern Company and to the Atchison Company for principal and interest of deposits made under said agreement (Schedule B) shall not be equal, the company to which the lesser amount is due shall be entitled at any time to pay to the company to which the greater amount is due one-half of the difference between the amounts due so as to equalize the amounts due to said companies respectively for deposits under said agreement; and at the time of any such payment the company making the same shall be entitled to receive from the other company a receipt, issued by the trustee under said
950 mortgage or deed of trust of the California Company, upon which there is then due from the California Company a sum equal to the payment thus made by the one company to the other, and such receipt shall be accompanied by an assignment thereof and of the claim against the California Company represented thereby.

Every such payment shall be made in the City of New York. The deposit by either the Atchison Company or the Southern Company with the Trustee hereunder of a sum of money upon special trust for the payment of any such difference to the other company shall be deemed a payment of such sum to the other company as of the date of the

deposit of such sum with the Trustee hereunder; but the Trustee shall not pay over any sum so deposited with it except upon delivery to it, for account of the company which deposited such sum, of a receipt issued by the trustee of said mortgage or deed of trust upon which there is due from the California Company the sum so deposited with the Trustee hereunder, together with an assignment thereof, as aforesaid, to the company which made such deposit thereunder. Principal and interest of sums due shall in each case be adjusted separately.

Whenever the amounts due to the Southern Company and the Atchison Company on account of deposits under said agreement (Schedule B) shall have been equalized through any payment or repayment, the right to vote upon the shares held by the Trustee shall again be governed by all the provisions of Article II and the dividends on said shares shall be paid over as provided in Article VII hereof.

Whenever the Trustee hereunder shall be called upon to take any action based on the amounts due to the Southern Company
951 and the Atchison Company respectively on account of the deposits made pursuant to said agreement (Schedule B), the Trustee hereunder may give notice to said companies to exhibit to the Trustee the receipts then held by them; and each of said companies, within three days after receipt of such notice from the Trustee shall exhibit to the Trustee all such receipts then held by it. The Trustee shall have full power and authority to determine, for the purposes of this agreement, from the receipts so exhibited to it, the amount then due to each company on account of such deposits, and if either the Southern Company or the Atchison Company shall fail to exhibit all receipts held by it within three days after notice from the Trustee, then the other company may furnish the Trustee a statement in writing of the amount due to the company failing to exhibit its receipts, and the Trustee may assume, for the purposes of this agreement, that such statement is correct and may act thereon, unless and until receipts shall be exhibited to it showing that such statement was incorrect. Any such determination by the Trustee may at any time be reconsidered, changed or set aside by the Trustee. Any such notice addressed to either the Southern Company or the Atchison Company and delivered to any officer or assistant officer of such company in the City of New York or elsewhere, shall be deemed served upon such company.

ARTICLE VI.

SECTION 1. The Southern Company and the Atchison Company severally and respectively covenant and agree each with the other and also with the Trustee, from time to time, upon demand of
952 the Trustee, to pay one-half of the expenses of the trust hereunder, including the reasonable compensation of the Trustee and all expenses that shall be incurred by it in preserving the stock

transferred to the Trustee and of defending and enforcing the rights and interests of the parties hereto in respect of said stock or under this agreement and also to the extent of one-half to indemnify the Trustee against all damage and liability while acting hereunder; and also from time to time, upon demand of the Trustee, to pay the taxes, if any, assessed upon the stock by such Railway Company transferred to the Trustee hereunder and then held by the Trustee.

SECTION 2. In case either the Southern Company or the Atchison Company shall fail to pay any sum or any part of any sum which by the terms of the foregoing section of this Article VI it is required to pay, then at any time during the continuance of such default the other of said two companies shall be entitled to pay such sum or the part thereof which the Company so in default failed to pay; and if such other Company shall make such payment, the Company in default shall be liable forthwith to repay the amount thereof to the Company which made such payment, together with interest thereon at the rate of six per cent. per annum until paid, and in addition thereto a commission equal to two per cent. of the principal sum so paid; and until such repayment, together with interest and commissions as aforesaid, the Company making such payment shall, provided a contrary disposition be not required by Article V hereof, which article shall at all times have precedence over this article as to voting, be entitled to vote upon all shares of the capital stock of the California Company transferred to and then held by the Trustee
953 hereunder (including all such shares transferred to the Trustee by the Company so in default), at all meetings of the stockholders of the California Company for the election of directors and for all other purposes not in conflict with Section 4 of Article II hereof, and the Trustee shall execute and deliver to such Company a power of attorney appointing such Company, or any person or persons that shall be designated by such Company in writing, the attorney, agent and proxy of the Trustee, with power of substitution, to vote upon such shares at all meetings of the stockholders of the California Company.

SECTION 3. If and so long as either the Southern Company or the Atchison Company shall be in default in the performance of its obligations under Section 1 of this Article, any dividends upon the shares in the California Company transferred by such Company in default to the Trustee and then held by the Trustee shall be applied in redeeming such default or in reimbursing with interest and commission as aforesaid the other Company for any payment it may have made on behalf of the Company in default.

ARTICLE VII.

The Southern Company and the Atchison Company severally and respectively shall, subject to the provisions of sec. 3 of Article VI hereof and subject to the provisions of paragraph (b) of Article V hereof, be entitled to receive from the Trustee all dividends received

or collected by the Trustee upon the shares transferred by them, respectively, to the Trustee and then held by the Trustee hereunder; and the Trustee shall pay over to each of said two companies first named all such dividends that shall be collected or received
954 by the Trustee upon the shares by it transferred to the Trustee.

ARTICLE VIII.

This agreement may be terminated at any time by an instrument in writing executed by the Southern Company and the Atchison Company. Unless previously terminated, as provided in this Article, this agreement shall continue in force until the California Company shall have paid or satisfied the principal and interest of all bonds that shall have been issued under its said mortgage or deed of trust and until said mortgage or deed of trust shall have been satisfied or released. In case of any such termination of this agreement or upon payment or satisfaction of the principal and interest of said bonds and release or satisfaction of said mortgage or deed of trust, the Trustee shall redeliver and retransfer to each of the two companies first named any shares transferred by it to the Trustee and then held by the Trustee, upon surrender of the trust receipt therefor and upon payment by such company of all sums by it payable hereunder.

ARTICLE IX.

The Trustee has become a party to these presents only for the purpose of signifying its acceptance of the trusts hereunder; it being understood that this agreement is made solely for the purpose of adjusting the respective rights and obligations of the Southern Company and the Atchison Company as between each other and for the purpose of furnishing to each of said two companies security for the performance by the other of its covenants and agreements herein contained.

ARTICLE X.

955 SECTION 1. Any demand, request, notice, designation or selection to be made by the two Companies first named or either of them under any provision hereof shall be sufficient if addressed to the Company to be notified, and if signed by the President or a Vice-President or by the Chairman of the Executive Committee or by the Comptroller or by the Secretary or an Assistant Secretary of the Company in whose behalf the same shall purport to be made, and shall be served by being delivered to or served upon any such officer of the Company to be notified.

SECTION 2. Any sum payable under any provision of this instrument by either of said two Companies first named to the other or to the Trustee under said mortgage or deed of trust shall be paid only by the deposit thereof with the Trustee to the credit of the Company to which such sum is payable; and upon receipt thereof by the Trustee

such sum shall, subject to the provisions of Article V hereof, be paid by the Trustee to such Company upon demand.

In witness whereof, each of the parties hereto has caused these presents to be signed by its President or one of its Vice-Presidents and its corporate seal to be hereunto affixed and attested by its Secretary or one of its Assistant Secretaries the day and year first above written.

SOUTHERN PACIFIC COMPANY,
By E. E. CALVIN, *Vice-President.*

[Seal S. P. Co.]
Attest:
C. B. SEGER,
Secretary.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By W. B. JANSEN, *4th Vice-President.*

[Seal A. T. & S. F. Ry. Co.]
Attest:
W. J. EDDY,
Asst. Secretary.

956 THE FARMERS' LOAN AND TRUST COMPANY,
By E. S. MARSTON, *President.*

[Seal F. L. & T. Co.]
Attest:
SAM SLOAN, Jr.,
Secretary.

957 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by John D. Spreckels, a witness before the Interstate Commerce Commission, who testified on the 29th day of January, 1907, at the city of San Francisco, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Spreckels were on the stand giving the same testimony.

Mr. EVARTS. Yes.

JOHN D. SPRECKELS

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Spreckels, what is your full name?

A. John D.

Q. And you live in San Francisco?

A. I do.

Q. And have for a good many years?

A. Yes, sir.

Q. Are you a member of the firm or corporation, whichever it may be, of John D. Spreckels Brothers' Company?

A. Yes, sir. I am president of the Company.

Q. Its corporate name is John D. Spreckels & Brothers'——

A. Company.

Q. Company?

A. Yes, sir.

Q. It appeared, Mr. Spreckels, at the hearing of this matter in New York, by the introduction of a resolution from the minutes of the Executive Committee of the Southern Pacific Railroad Company, that on the 23rd of July, 1906, Mr. Harriman, the Chairman of the Board, reported to the Committee that he had purchased from J. D. Spreckels & Brothers Company for the sum of thirteen hundred thousand
958 dollars, all of the property of the Coos Bay, Roseburg & Eastern Railroad & Navigation Company, the Coos Bay & Coquille Valley Railroad Company, including coal lands in Beaver Hill—I think it should be—although it says here Fibre Hill——

A. It is Beaver Hill.

Q. ——Alluvial Hard Coal Company, with their machinery, buildings, dockage, coal bunkers at San Francisco and docks, coal bunkers, water front property, and terminal lots at Marshfield, and all property complete, in that country, which belongs to J. D. Spreckels & Brothers Company, and the entire company, including all bonds, to be delivered under the guaranty of J. D. Spreckels, free and clear of all incumbrances and liabilities. And the action of the President, Mr. Harriman, in authorizing that purchase was approved. You are familiar with that transaction, are you, Mr. Spreckels?

A. I am.

Q. And also with the property that J. D. Spreckels & Brothers Company sold to the Southern Pacific?

A. Well, in a general way only. I have never been to the property and visited it myself.

Q. What member of your corporation is familiar with it, Mr. Spreckels?

A. Mr. Samuels, Mr. F. S. Samuels.

Q. Mr. F. S. Samuels?

A. Yes, sir.

Q. Is he in the city?

A. He is in the city; yes, sir.

Q. How many years, Mr. Spreckels, has your company been interested in that property?

A. Well, I would not be positive as to that; ten or fifteen.

Q. You say that in a general way you are familiar with the property. In what does it consist?

A. Coal mines, a railroad, and steamship lines.

Q. And steamship lines, did you say?

A. Yes.

959 Q. Now, this railroad is how long?

A. About 29 miles, I think.

Q. And one terminus of that road is Marshfield, on Coos Bay?

A. No, sir; Myrtle Point.

Q. Myrtle Point?

A. Yes, sir.

Q. But it passes through Marshfield?

A. It passes through Marshfield; yes, sir.

Q. And Marshfield is the principal town on Coos Bay, is it not?

A. Yes, sir, I think so.

A. And where, in a general way—that is, into what kind of country does the little railroad run?

A. It runs through a timber country and into the coal fields.

Q. Is there any agricultural country tributary to it?

A. Yes, I believe there is.

Q. And are the products of that agricultural country marketed over this railroad and in those steamships?

A. Yes, sir, and brought by steamer down to San Francisco. It is principally coal, however; some lumber.

Q. Coal and lumber.

A. Yes, and they have some dairy products.

Q. Mr. Spreckels, what are the names of the ships owned by this company?

A. One is called the "Breakwater" and the other is called the "Czarina."

Q. What is the tonnage capacity of the "Breakwater?"

A. The "Breakwater" will carry about 600 tons—that is her capacity in coal.

Q. I beg your pardon?

A. She is a passenger steamer and——

Q. The "Breakwater" is a passenger steamer?

A. Yes, sir. The other, the "Czarina," carries about 1,400 tons. She is a collier.

960 Q. Mr. Spreckels, does the "Breakwater" also carry freight?

A. Yes, sir, she carries freight.

Q. Carries freight and passengers?

A. Yes, sir, both.

Q. What is her capacity as far as carrying passengers is concerned?

A. She will carry about 48 passengers.

Q. 48 you say?

A. 48 passengers, yes, sir.

Q. Between what ports have these boats been plying?

A. The "Breakwater" has been plying between Coos Bay and San Francisco.

Q. Between what points?

A. Coos Bay and San Francisco. And the "Czarina" has plied between other ports as well.

Q. What ports?

A. At a time when we could not get our sufficient quantity of coal to give her a cargo, we would divert her and send her to Portland for a cargo of wheat, for instance.

Q. And she would stop in going down the coast, whereabouts?

A. I say she went up to Portland, for instance.

Q. So that the "Czarina" has been plying between Portland and San Francisco, and between intermediate ports?

A. No, sir, not between Portland and San Francisco and intermediate ports. She would go from Coos Bay to Portland——

Q. She would go from Coos Bay to Portland, you say?

A. Yes.

Q. And then from Portland, where would she go? Would she come to San Francisco from Portland?

A. Yes, come to San Francisco.

Q. That is, if I now understand you, she would go up to Coos Bay, and then go to get a load of grain at Portland and bring it from Portland down to San Francisco?

A. Yes, sir.

961 Q. Has the "Breakwater" ever been up to Portland?

A. No, sir; she has never been diverted from the regular route.

Q. Her regular route is from Coos Bay to San Francisco?

A. Yes, sir.

Q. And how many years has she been in service, Mr. Spreckels—in that service, I mean?

A. About two years, I think.

Q. About two years?

A. Yes, sir; possibly three.

Q. How is that?

A. I say possibly three.

Q. And how long has the "Czarina" been in that service?

A. She has been in that service for a longer period, probably ten years.

Q. Ten years?

A. Yes, sir.

Q. What was the cost of the "Breakwater," Mr. Spreckels?

A. Well, I could not tell you offhand. The "Breakwater" would cost about $75,000.

Q. About $75,000?

A. Yes, sir.

Q. And the "Czarina," how much?

A. Well, she would cost about $50,000.

Q. About $50,000?

A. Yes, sir; we bought them as second-hand boats.

Q. They were second-hand when you bought them?

A. Yes, sir; we bought a lot from the East—they were eastern boats.

Q. What was the return cargo of the boats running up to Coos Bay?

A. They were principally engaged in moving coal.

Q. I mean the return cargo, from here to Coos Bay?

A. General merchandise.

Q. General merchandise?

A. Yes.

962 Q. How large a town is Marshfield?

A. I could not say as to that. I have never been there.

Q. Oh, you have never been there?

A. No, sir.

Q. Has Marshfield any other direct outlet at present than your steamship line?

A. No, sir; that is about the only outlet she has. There are other steamers from time to time go in there and take passengers.

Q. But the only regular boats were yours?

A. Yes, sir; regular boats, and then the one belonging to Goodall, Perkins & Company—they had a boat running there and have still, I think.

Q. From what point?

A. From San Francisco to Coos Bay.

Q. Do you know the name of that boat?

A. I think it is called the steamer "Plant."

Q. The steamer "Plant?"

A. Yes, sir.

Q. She is still running there, is she?

A. I think so, yes.

Q. Mr. Spreckels, how far is it from Roseburg to Coos Bay?

A. I think about 90 miles.

Q. I notice the name of this corporation is the Coos Bay, Roseburg & Eastern Railroad Company.

A. Yes, sir.

Q. Did you build the road?

A. I did not; no, sir.

Q. Who built it?

A. A man by the name of Graham. He came to me at the beginning—he came to see us, the firm, to negotiate the purchase of some rails. He then made a noise like an honest man, and I let him have the rails. If I had required more from him, I probably would not have been able to sell the road to the Southern Pacific, or to anybody else.

Q. I did not hear that last statement.

963 A. I said if I had required more than a noise I would not have had the road to sell.

Q. If you had required more than what?

A. A noise. They say making a noise like so and so. I said he made a noise like an honest man.

Q. I judge from your remark that Mr. Graham and yourself are not on the best of terms?

A. No, sir; I have no use for him.

Q. He built the road. That is all I care about. He built the road, did he?

A. Yes, sir; he built the road.

Q. And it afterwards came into your possession?

A. Yes, sir.

Q. And there were some coal properties there?

A. Coal properties; yes, sir.

Q. What kind of coal?

A. It is lignite.

Q. And the boats bring that down——

A. To the market here.

Q. To the markets?

A. Yes, sir.

Q. Who conducted the negotiations with Mr. Harriman for the sale of this property to him?

A. It was not conducted with Mr. Harriman directly. It was through an intermediary, Mr. Smith—Mr. James Smith.

Q. Who is Mr. James Smith?

A. He is the president, I think, of the Western Fuel Company. I don't know whether he has any middle name or not.

Q. And with whom did Mr. Smith have his dealings?

A. With myself, and also with my brother. I felt at the time that he was negotiating for the Southern Pacific, because at the time that Mr. Collis P. Huntington was still alive they were then looking into the proposition of acquiring the road, because they wished to overcome the grades on the Shasta Mountains, rather
964 than haul the wheat, as they did, up to Portland, and then bring it down by steamer; that they could cut off about 300 miles up and 300 miles back, or 600 miles in all, by going into Coos Bay. And they having, as I say, during the lifetime of Mr. Huntington, looked into the proposition, and we supplied them with the surveys and different things, and a list of the property that we had, and then the negotiations were never concluded because Mr. Huntington died about that time—for that reason I thought it was the Southern Pacific Company that were negotiating for the property.

Q. Were the negotiations resumed several years ago, or only a short time before the acquisition of the property?

A. Well, it was last summer—it was not concluded; a payment was to be made for the property on the day of the catastrophe last year, at 10 o'clock that morning, and of course the catastrophe knocked everything out.

Q. You mean the earthquake here?

A. Yes, sir; last spring.

Mr. LOVETT. Will you read the answer of the witness as to Mr. Collis P. Huntington—in which he stated that Mr. Huntington was looking into the sale of the property.

WITNESS. I did not say he personally—I did not mean that.

Mr. LOVETT. For the purpose of understanding him I would like to have it read. I am not sure I understand him. Will you turn and read that question and that answer. He said something about a shortening of the line 300 miles. It is in reference to that inquiry.

(The answer in question repeated by the reporter.)

WITNESS. I would not say that they tried to overcome the
965 grades, because they could not do it by acquiring this road—that is inaccurate.

Q. Prior to the time that this trade was concluded, which you state was at the time of the catastrophe last spring, had Mr. Har-

riman commenced the construction of the line of road, a connection with the Southern Pacific towards Coos Bay?

A. Not to my knowledge.

Q. Did he at that time, to your knowledge, have in contemplation such a line?

A. Yes, sir; they proposed to build—the route was to be from Myrtle Point, I think, to Roseburg, or some other point on the——

Q. From where?

A. From Myrtle Point to Roseburg.

Q. And how far is it from Myrtle Point to Roseburg?

A. About 60-odd miles—69 miles, I think.

Q. Do you happen to know, Mr. Spreckels, whether that line is under construction, or a line similar to that is now under construction.

A. No, sir. I haven't really paid much attention, for I have been really sick for the period of a year, and I didn't pay much attention as to what was going on in the way of railroad building.

Q. These matters have been more in the charge of your brother, or Mr. Samuels?

A. Yes, sir. For one thing, after disposing of the road I had no further interest in that.

Q. You say the deal was to be closed the day of the——

A. Yes, sir. The payment was to be made on that day, the day of the earthquake, and it was not made until——

Q. But when was the trade made, Mr. Spreckels?

A. I think on—oh, when the trade was made? I don't
966 know; I was sick, you know, about a year ago in July, and up to the time of the earthquake I was confined to the house, and it was prior to that time negotiations were pending; and, as I said, the payment was to be made on the 18th of April, the day of the earthquake, and it was not made, I think, until some months subsequently.

Q. I understand that. Do you happen to recall, Mr. Spreckels, how long prior to last spring the negotiations were commenced with Mr. Smith?

A. Quite a while before that. Oh, I suppose the negotiations ran over a period of six or eight months.

Q. Ran over a period of six or eight months?

A. Yes, sir.

Q. Were those negotiations thus protracted because of discussions of the price to be paid?

A. Well, that had something to do with it; yes, sir.

Q. Mr. Smith first approached you or your brother, did he, with reference to the sale?

A. He first approached my brother; yes.

Q. That is, the initiative did not come from you, but came from Mr. Smith?

A. Came from them; yes.

Q. When did you learn for the first time that Mr. Smith represented the Southern Pacific?

A. Well, I had my suspicion all along that they were the ones, that the Southern Pacific wanted it, because I could see that they had need for that road.

Q. Since the purchase by the Southern Pacific, do you happen to know whether they are running the road and the ships?

A. They are operating the road now.

Q. And the ships?

A. Yes, sir.

Q. This resolution speaks of two railroads. One is the Coos Bay, Roseburg & Eastern Railroad & Navigation Company. The
967 other is the Coos Bay & Coquillo Valley Railroad Company. Were there two corporations there?

A. Well, not to my knowledge.

Q. You never heard of that last one, did you?

A. No, sir; I never did.

Q. What was the nature of the sale that you made? Was it the stock of the railroad or the property?

A. No, sir; it was a cash proposition.

Q. I know; we understand that it was cash to you.

A. Yes, sir.

Q. But I mean did you sell this property by turning over the stock, or give a deed?

A. The stock and bonds.

Q. The stock and bonds?

A. Yes, sir, and the property itself.

Q. What was the amount of bonds?

A. I could not say as to that. The bonds were never issued.

Q. They were never issued?

A. No, sir.

Q. Do you now recall, Mr. Spreckels, the cost of this property to you; that is, of the railroad and coal lands?

A. No, I could not tell you as to that. It was over a million dollars.

Q. That is, the whole property cost over a million dollars?

A. Yes, sir.

Q. Do you feel very sure of that, sir?

A. Oh, yes.

Q. How is that?

A. Yes, sir; considerably more than that.

Q. Was the operation of the boats that you have mentioned a profitable one, sir?

A. No, sir.

Q. It was not profitable?

A. It was not profitable.

Q. Was the operation of the railroad profitable?

A. Well, yes; there was more profit in that—yes.

Q. That is, you got a little more than you paid out?

A. Yes, sir.

968 Q. Was the traffic large or small?

A. No, sir; the traffic was small.
Q. The traffic was small?
A. Yes, sir.
Q. Were you informed during these negotiations as to whether this line of road that the Southern Pacific contemplated building would connect with the end of this road of yours?
A. Yes, sir; that is my understanding.
Q. That is your understanding?
A. Yes, sir.
Q. So that it is really an extension of yours?
A. It is an extension; yes.
Q. Are you sure about that, Mr. Spreckels?
A. Well, I thought it was to be an extension to Roseburg, but later I saw in some paper that they were going to some other point nearer the road.
Q. Do you happen to know whether it is going to Myrtle Point, your terminus?
A. I think so; yes.
Q. Is it a good harbor at Coos Bay?
A. Yes, sir; a very good harbor for light-draft vessels. You could not load a vessel drawing over 15 feet there. That is the utmost you can take out of there.
Q. Was the operations of the coal mines a profitable one?
A. No, sir.
Mr. DUNNE. What did you say?
WITNESS. I said "No."
Q. Then, as I understand it, the only self-sustaining part of these properties was the little railroad?
A. Yes, sir. The profits net on the road were very small.
Q. And the operation of the coal mines and the vessels did not prove profitable?
969 A. No, sir. I had in mind or contemplated extending the road from Myrtle Point to Roseburg, so as to connect with the Southern Pacific there, and had surveys made, which surveys, I think, were turned over to Mr. Huntington at that time.
Q. I did not understand that.
A. I turned it over to Mr. Huntington, or his representative at least, at that time.
Q. Did you ever get them back?
A. I could not say. I have no use for them now, anyhow.
Mr. LOVETT. What was that?
Mr. SEVERANCE. I asked him of he got them back.
Mr. LOVETT. What?
Mr. SEVERANCE. The surveys from Myrtle Point to Roseburg. Q. In the course of your negotiations with Mr. Smith, did you indicate to him that you had contemplated building a road over to the east?
A. No, sir; I don't remember that.
Q. You don't remember that you did?
A. No, sir.

Q. Then, as I understand you, the whole story is that you built this road, put on those steamers, did this business at the coal mine, put in a million dollars, the property was operated at a loss, Mr. Smith approached you on behalf of the Southern Pacific to buy you out and paid you $1,300,000 for it?

A. Yes, sir; about that.

Q. That is about the story?

A. That is about the story.

Q. And the Southern Pacific have now the entire outlet into San Francisco from Oregon?

A. Yes, sir.

Mr. SEVERANCE. That is all.

Examined by Mr. LOVETT:

Q. When was that road constructed? Do you remember?

A. I don't know just what year it was. I think about 10 or 15 years ago, as near as I can remember.

970 Q. You said Mr. Huntington, Mr. C. P. Huntington, looked into it?

A. Well, his representative did; I think it was Mr. Kruttschnitt.

Q. Who?

A. Mr. Kruttschnitt.

Q. You wanted to sell the property, I presume?

A. I did, yes. I was glad to get rid of it.

Q. I infer from the reference you have made to your sale of rails to Mr. Graham that you got into it rather unwillingly?

A. Well, I had to take it over. As I say, I sold him the rails, and he could not pay for them.

Q. How far is it, Mr. Spreckels, from the nearest point of that road to the Southern Pacific, the existing line?

A. Well, I could not say as to that. My impression is that it is Roseburg—there may be some nearer point—about 69 miles.

Q. About 69 miles?

Mr. SEVERANCE. About 65 miles?

WITNESS. 69 miles.

Mr. SEVERANCE. Oh, 69. Pardon me.

Q. What is the character of the country between?

A. I have never been there and I could not tell you.

Q. Have you any information on the subject?

A. I took so little interest in the thing that I didn't go there.

Q. You have no information on the subject, no reports as to the character of the country?

A. No, sir.

Q. You don't know whether it is mountainous or not?

A. Yes, sir; it is a mountainous country.

Q. It is a mountainous country?

A. Yes, sir.

Q. Quite a rough country, is it not?

A. It is a rough country, as I have been informed, going up
971 towards Roseburg, up through the canyon; as I understand it, there is only sufficient room for one rail.

Q. For one what?

A. For one rail—one line of road.

Q. It is a thinly populated country, is it not?

A. Yes, sir; I think it is—well, I would not say as to that; I really don't know. I think it is thinly populated. I only judge by the travel we had on the steamers.

Q. Is it not true, Mr. Spreckels, that practically the only outlet for the products and commerce of that country were by boat?

A. That is all; yes, sir.

Q. The Southern Pacific never competed in that, did they?

A. No, sir; never got in there at all.

Q. Never handled freight or passengers from the territory served by you?

A. No, sir; except a few who had to go down on urgent business, I suppose. They would take the stage from Myrtle Point up to Roseburg and take the train there.

Q. But there is no traffic of any consequence?

A. Nothing of any consequence.

Q. I believe that you stated that the "Breakwater" cost $75,000.

A. Well, thereabouts.

Q. Thereabouts?

A. Yes, sir.

Q. And the "Czarina" about $50,000?

A. About $50,000.

Q. You understood the coal mines contained the principal inducement?

A. The coal mines were the principal property there.

Q. You understood that that was the main object of the purchase, did you not, in acquiring this property?

A. No, sir. I thought that the Southern Pacific wanted to build a line connecting with their road, I thought at Roseburg, but I think at some other point that they wanted to connect, simply
972 to do away with the haul of wheat from the vicinity of Roseburg, which is a very productive country, up to Portland, and then down by steamer. They could save about 600 miles, as I take it.

Q. And wished to utilize this 29 miles of existing road as a part of it?

A. As a part. And then they had landings and wharves and such other things as they necessarily would have to have.

Q. On Coos Bay?

A. Yes, sir; on Coos Bay.

Mr. DUNNE. Did the Southern Pacific have some coal properties adjoining your coal properties there?

WITNESS. Not to my knowledge.

Mr. DUNNE. Not to your knowledge?

WITNESS. No.

Commissioner LANE. Is there any railroad competing with the Southern Pacific there?

WITNESS. No, sir.

Commissioner LANE. Did you have knowledge of any other railroad making any surveys from eastern Oregon over into your section?

WITNESS. No, sir; excepting merely by rumor. I think the Rock Island proposed to build in there, but it never amounted to anything. It was merely a rumor.

Commissioner LANE. No other railroad sought to buy that property from you?

WITNESS. No, sir.

Mr. DUNNE. Mr. Spreckels, whether the Southern Pacific Company, as a matter of fact, had or had not coal properties adjoining the coal properties connected with your road, the coal properties in that neighborhood were made accessible by this road?

973 WITNESS. Yes, sir.

Mr. DUNNE. And the facilities at the terminals?

WITNESS. Yes, sir.

Mr. SEVERANCE. Mr. Speckels, Judge Lovett asked you if there had been any competition between the Southern Pacific and your line, and you stated, I believe, that there had not.

WITNESS. There has not.

Mr. SEVERANCE. As soon as the Southern Pacific got its line through to Coos Bay there would have been competition, would there not, between your boats and the trains of the Southern Pacific, necessarily?

WITNESS. Well, I suppose so: I don't know.

Mr. SEVERANCE. Yes. And it was a very easy way to remove your competition to take the course that was adopted, to buy you out?

WITNESS. I was very glad to get rid of it.

Mr. SEVERANCE. There is no doubt about that. I should think, with a losing property of that kind and $300,000 bonus on top of it, you might be glad to get rid of it?

WITNESS. They appeared to be more anxious to acquire it than I to hold it.

Mr. SEVERANCE. I have no doubt whatever of that. That is all, Mr. Spreckels.

Mr. LOVETT. You were not in a position to be a very formidable competitor of the Southern Pacific, were you?

WITNESS. No, sir.

Mr. SEVERANCE. Now, let us see about that, Mr. Spreckels. You were in business there?

WITNESS. Yes, sir.

Mr. SEVERANCE. You had a line of boats?

974 WITNESS. Yes, sir.

Mr. SEVERANCE. Popular rumor attributes to you sufficient funds to procure more boats if they tried to run you out?

WITNESS. I am afraid we had too many boats as it was, and that is from the fact that we did not have enough work for the two boats we did have, and had to charter one of them to outsiders.

Mr. SEVERANCE. That is all.

By Mr. SEVERANCE:

Q. There is one question that I did want to ask Mr. Spreckels, which I forgot. You need not resume the stand, Mr. Spreckels, but you may answer from where you are. What coal bunkers in San Francisco went with this trade that you made?

A. Coal bunkers on the Howard street wharf.

Q. Did your company own the bunkers, or simply lease them—I mean own the dock?

A. No, the dock was owned by the State, and we had the bunkers there.

Q. What was their value, about? Have you any idea?

A. No, sir; I have no idea.

Q. And you paid a rental for the use of the docks?

A. Paid a rental for the use of the docks, yes, in addition to the regular wharfage charges and dockage charges for vessels.

975 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by W. J. Shotwell, a witness before the Interstate Commission, who testified on the 30th day of January, 1907, at the city of San Francisco, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Shotwell were on the stand giving the same testimony.

Mr. LOVETT. Yes.

W. J. SHOTWELL

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live, Mr. Shotwell?

A. San Francisco.

Q. And what is your business?

A. Railroading, representing the Denver & Rio Grande and other through lines.

Q. How long have you lived in San Francisco?

A. About 14 years.

Q. And during that time what business have you been in?

A. Representing the D. & R. G principally.

Q. What is your title here?

A. General agent.

Q. Has that been your title all the time you have been here?

A. Yes, sir.

Q. What are your duties?

A. I am representing the traffic department, soliciting freight and passenger business.

Q. Soliciting business?

A. Yes, sir.

Q. Will you state how the business of the Denver & Rio Grande, both in and out of San Francisco, the business in which you share in and out of San Francisco, compares with the business you did prior to 1901?

976 A. Well, we are not doing as heavy a business to-day as we did in 1901.

Mr. DUNNE. Will you speak a little louder, please.

WITNESS. We are not doing as much business to-day as we did in 1901.

Q. And previous years.

A. And previous years.

Q. What is the difference, in a general way—say in percentages?

A. We are doing less than 50 per cent of the business to-day than we were in 1901.

Q. Will you state, if you know, the reason for that?

A. The reason is that the Southern Pacific devote their efforts to securing the business for the Union Pacific, and in that way that affects our traffic.

Q. How was it before 1901? What was the attitude of the agents of the Southern Pacific towards your company and the Union Pacific?

A. I considered them neutral.

Q. They were neutral?

A. Yes, sir.

Q. And how soon after the acquisition of the Southern Pacific stock by the Union Pacific did you find this change take place in the attitude of the agents of the Southern Pacific?

A. Well, it was gradual.

Q. And is constantly more noticeable?

A. Becoming more noticeable, yes, sir, at the present time.

Q. In soliciting business, in opposition—I assume that you are in opposition to the Union Pacific in soliciting business?

A. Yes, sir.

Q. In soliciting business in opposition, in your work of soliciting that business, what do you find is the attitude of the agents of the Southern Pacific and Union Pacific in routing business?

977 A. I find that the business controlled by the Southern Pacific agents is almost invariably routed either by the Union Pacific or by the Sunset to New Orleans.

Q. That is what I want to get at. Does the business that originates or goes to any particular section go by either one of those routes as against the other?

A. Yes, sir. I consider the business subject to the control of the Southern Pacific is routed one way or the other, by the Sunset or by the Union Pacific.

Q. Is there any difference as to the way it is routed, depending on the origin of the traffic?

A. I think they usually—at the present time I don't know that there is very much difference or very much preference one way or the other, but previous to 1901 the Sunset route business was considered by us to be seaboard business and southeastern States business—southeastern territory of the United States—or business that could be reached by New Orleans.

Q. Do you know now which way, if either way, the Southern Pacific agents endeavor to route traffic that goes to the seaboard or comes from the seaboard, as between the route by Ogden and the Union Pacific on the one hand and the Sunset on the other?

A. I think they are neutral as to that.

Q. Neutral.

A. As between these two routes; yes, sir.

Q. Is this testimony that you have given with reference to the efforts made by the Southern Pacific to influence business with the Union Pacific as against your company testimony that applies only to the freight business, or does it apply also to the passenger business?

A. It applies to both.

Q. How is that?

A. On both freight and passengers.

978 Mr. SEVERANCE. You may examine him.

Mr. LOVETT. We have no questions.

Mr. DUNNE. I would like to ask him one question. You are an officer of the Western Pacific, are you not?

WITNESS. A director; yes, sir.

Mr. DUNNE. You are a director of the Western Pacific?

WITNESS. Yes, sir.

979 Mr. SEVERANCE. I now offer, pursuant to agreement, the testimony given by William A. Bissell, a witness before the Interstate Commerce Commission, who testified on the 30th day of January, 1907, at the city of San Francisco, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Bissell were on the stand giving the same testimony.

Mr. EVARTS. Yes.

WILLIAM A BISSELL

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Bissell, where do you live?

A. I live across the Bay at Alameda.

Q. And where is your office in San Francisco?

A. San Francisco—673 Market street.

Q. What is your business?

A. I am assistant traffic manager of the Atchison System.

Q. Who is your traffic manager?

A. They have no traffic manager; they have a freight traffic manager, and a passenger traffic manager. Mr. Gorman is freight traffic manager, and is over me, and also Mr. Black, located in Chicago.

Q. Are you assistant to both of them?

A. Yes, sir.

Q. You are the chief representative of the traffic department here on the coast?

A. Yes, sir.

Q. Who is the general freight agent of your company?

A. On the coast?

Q. Yes, sir.

A. Mr. Barnwell—W. G. Barnwell.

Q. What is Mr. Chambers?

980 A. He is assistant freight traffic manager.

Q. Is he assistant to you?

A. Yes. He is in active charge of the detail business.

Q. He is in active charge?

A. Yes, sir.

Q. And your work is confined largely to supervision?

A. Yes, sir.

Q. You keep yourself posted as to the traffic conditions, however, do you not?

A. Reasonably so, yes, sir.

Q. Are you connected any way with the Northwestern Pacific?

A. Yes, sir, I am a director of the Northwestern Pacific.

Q. In addition to being a director are you an officer?

A. No, sir.

Q. Who has charge of the traffic of that system, the Northwestern Pacific?

A. Mr. Ryan, F. X. Ryan.

Q. What was his position prior to the organization of the Northwestern Pacific?

A. He was general freight and passenger agent of the California Northwestern, and also of the North Shore.

Q. Are those the Southern Pacific lines that went into the combination, or were they the Santa Fe lines?

A. As far as it was publicly known, they were neither; they were independent lines. I don't understand——

Q. Mr. Bissell, Mr. Payson testified yesterday that there were certain lines belonging to the Southern Pacific and certain lines belonging to the Santa Fe that went into the Northwestern Pacific, and he named these lines you have spoken of?

A. He is better authority on those matters than I am.

Q. I don't remember whether he said they were Southern Pacific or Santa Fe lines?

A. He must have said they were Southern Pacific lines, if
981 he said either. They are the lines we always supposed were controlled by the Southern Pacific, and the lines he referred to as the Santa Fe were the lines up north, on Eel River.

Q. Prior to the amalgamation of those lines up north, who had control of the traffic conducted over the Santa Fe line?

A. Up in the north there?

Q. Yes, sir.

A. Mr. Porter, at Eureka.

Q. And to whom did he report?

A. He reported to Captain Payson.

Q. Captain Payson.

A. Yes, sir.

Q. He did not report to you?

A. No, sir.

Q. I understood the Captain to say yesterday he did not have anything to do with the traffic, and so I was going to find out who had.

A. I think Porter ran the business without very much reporting to anybody.

Q. What little reporting he did do was to Captain Payson?

A. Yes, sir.

Q. What has become of him now?

A. He is still there.

Q. What is he doing?

A. Well, he is in charge of those northern lines. The Northwestern Pacific has not been in existence long enough so as to get down to any outline of the business. So far as I know the officers continue just as they were.

Q. I don't think I asked Captain Payson yesterday, and I will ask you as a director: Has the Northwestern Pacific started in on the construction of lines that are to tie the system together?

A. The actual construction?

Q. Yes.

A. No, sir.

Q. Have you let any contracts?

A. I don't know that we have. It is not a very good time of year to build railroads up in that country.

982 Q. You have located a line?

A. There have been several surveys. Captain Payson could probably tell you about that.

Q. He knows more about that?

A. Yes, sir.

Q. Then you have very little to do with the line, with the exception of being a director?

A. Yes, sir.

Q. How far east does your jurisdiction extend, Mr. Bissell?

A. To Chicago.

Q. Oh, all the way to Chicago?

A. Yes, sir.

Q. And covers what traffic?

A. All the traffic.

Q. All the traffic?

A. Yes, sir; freight and passenger.

Q. You are familiar with the eastern movement of fruit from southern California, are you not?

A. Somewhat, yes sir. I have not had very active control of the detail work of that for some time. In a general way, I am familiar with the situation there.

Q. Who has the direct control of that?

A. Mr. Chambers is closer to that.

Q. Mr. Chambers is closer to that, you say?

A. Yes, sir, to the detail of that work.

Q. Has there been, so far as you are advised, the last two years, any change in the method of handling the fruit crop of southern California as between the Southern Pacific and the Santa Fe?

A. Not to my knowledge.

Q. The traffic is divided up about the same as it was four or five years ago?

A. Well, I could not say as to that; as a general proposition I should say yes. The traffic is so located there that it would naturally divide about equally.

Q. Does your road make any effort to get fruit traffic that originates on the Southern Pacific lines in southern California?

983 A. Yes, sir, we take business from other lines.

Q. Do you solicit it? Do you have men actively at work trying to get business from other lines, in competition with the Santa Fe?

A. As to that I could not say. I don't think we do, because the main effort we have had for the last three or four years has been to get our cars back fast enough to take care of the fruit that was offered.

Q. Is it not a fact, Mr. Bissell, that an arrangement has existed for a number of years between the Southern Pacific and your company by virtue of which you have each refrained from endeavoring to get business of that character originating on the line of the competing road?

A. In Southern California?

Q. Yes.

A. No, sir.

Q. Has there never been any such arrangement, to your knowledge?

A. Well, there was—I presume you refer to the testimony that came out on the former case and partly exploited at that time. The business is so located down there that it naturally about evenly divides itself between the two companies and we have always had all we could do to get our equipment back to take care of our own. We have taken fruit at times from the Southern Pacific, and at times they have taken fruit from our line. As a general proposition, if it were up to me, I should prefer to take the fruit that originates on our own line, as then we do not have to divide the earnings with anybody.

Q. Mr. Bissell, the Southern Pacific and the Santa Fe lines are very close together, are they not, between San Bernardino, we will say, and Los Angeles?

A. Yes, sir.

Q. And there is a large amount of fruit that might easily be
984 procured by one company as against the other by active solicitation. Is that not true?

A. Well, that is true in a measure, but most of that fruit is controlled—the routing of most of that fruit is controlled by the location of the packing houses. If an orange shipper had a packing house on the line of the Southern Pacific he would not ship over our line unless there was some unusual condition of affairs. If the Southern Pacific had no cars he might haul his fruit over to our line.

Q. Do you make any effort to get fruit that belongs to packers on the Southern Pacific track by holding out the offer of efficient service, or facilities, or anything of that sort?

A. Why, we have at times done so, Mr. Severance.

Q. How long ago did you do that?

A. I could not tell you exactly.

Q. You do not do it now, do you?

A. I don't think so. We haven't equipment enough. We have always had a hard time to get that equipment back to take care of the business originating on our own tracks.

Q. Have you increased your equipment?

A. Yes, sir.

Q. Does the business increase faster than your increase in equipment?

A. The business has shown a general increase, and we have also had less ability to get our cars back from the east.

Q. Why?

A. Well, on account of the weather conditions that exist there. I don't know that I could give you the detail of it, but it seems to be harder every season to get our equipment back.

Q. Now, Mr. Bissell, have you been the last few years operating your own refrigerator cars or not?

985 A. We have been operating our own cars.

Q. For how many years have you done so? Have you answered?

A. I was trying to think how many years. I don't remember. It might be six or seven years.

Q. How many refrigerator cars have you?

A. We have at the present time approximately 6000, I believe.

Q. And how recently have you procured these cars? You did not procure those 6000 cars at once, did you?

A. No, oh, no. I think the additional equipment this year was about 600 cars.

Q. You added 600 cars this year?

A. Yes, sir.

Q. Then, as I understand it, you do not solicit business in opposition to the Southern Pacific, and the reason you give for that is that you are shy of equipment?

A. Yes, sir.

Q. Aside from that you would actively solicit that business off the tracks of the Southern Pacific, or would you prefer, as you said a moment ago, to let each line take the fruit that is naturally tributary to it?

A. It would depend a good deal on many conditions, Mr. Severance. If we were short of business I think we would endeavor to fill up with that business.

Q. You think you would?

A. Yes, sir.

Q. Now, Mr. Stubbs—you are acquainted with Mr. Stubbs, are you not?

A. Yes, sir.

Q. Mr. Stubbs testified at Chicago on this subject on the 8th of January 1902, and he was asked if there was any arrangement between his company, the Southern Pacific, or his companies throughout—his companies, the system that he represented—and the Santa Fe, and he answered first that the general arrangement was that they would consult and agree upon rates. He was
986 then asked if there was anything regarding the percentage of traffic each should have, and he said this: "There is an understanding, but it is not in writing. You may say it amounts to an understanding that, so far as the orange business is concerned, we will endeavor to work an equal division of that traffic. That arises from the fact that it is about so divided in its production on our local lines in California; there is about 50 per cent produced on the lines owned by the Santa Fe, and about 50 per cent produced on the Southern Pacific, and so far as possible we agree that we shall not interfere with each other's local business." Now, is that agreement still in force?

A. I don't—the general policy is still in force; we would not go onto the line of the Southern Pacific and offer to take their oranges and team them over to our line.

Q. You have heard of railroads competing with each other, have you not, in different parts of the country?

A. In that way?

Q. Yes.

A. Yes, sir; we have done it ourselves, but that was before we were held down so tightly by the law.

Q. But you do not approve of that policy as applied to the Southern Pacific and the Santa Fe in California?

A. No, sir, not under present conditions, I don't believe there is anything in it.

Commissioner LANE. I did not hear what you said a moment ago to the effect that you had heard of competition, one road competing with another.

WITNESS. In that way, yes—taking business off the other line and teaming it over. I told him I had heard of it and I had done it. As I understand it, he then asked me if we were doing
987 that in southern California, and I told him "no."

Q. So that, as far as the orange crop that is raised in that big valley running back from Los Angeles, in which both Redlands and San Bernardino are, and in which both the Southern Pacific and your line have trackage, there is no competition for the business?

A. Well, of course it is necessary to know what you mean by that, Mr. Severance.

Q. No effort made by your line or the Southern Pacific to procure the business. You simply take that which comes to you?

A. Yes, sir; that is correct under present conditions.

Q. There is another railroad in there now, is there not, known as the Salt Lake line?

A. Yes, sir.

Q. What kind of attitude do you have towards the Salt Lake line with regard to the orange business?

A. In regard to the orange business, I could not tell you much about the details of that, Mr. Severance. Mr. Chambers handled that personally.

Q. Is he here?

A. No, sir; he is not here at the present time. I believe that there was quite a lot of oranges went east over the Salt Lake road last year.

Q. Do you know, or have you been told by Mr. Chambers, about what percentage, what part of the oranges raised in that vicinity the Southern Pacific and the Santa Fe are willing to concede to the Salt Lake road?

A. No, sir.

Q. You haven't been told?

A. No, sir.

Q. You do not know?

A. No, sir.

Q. Now, Mr. Bissell, which way do the oranges move to the east, as a rule, that go over the Southern Pacific from that region? Do they go by Sunset, or go up to Ogden?

988 A. I don't know of any oranges going east by Sunset. Do you mean extreme east?

Q. Anywhere east.

A. I could not tell you about that, Mr. Severance, except I have a general under-standing that in the early part of the season they move the oranges east by El Paso and later on they move them east by Ogden, as the weather moderates.

Q. When they go by El Paso they are taken on to Chicago by the Rock Island or the Texas Pacific?

A. I think they are divided. I don't know how that is. I know they don't go over the Santa Fe.

Q. You know that they don't go over the Santa Fe?

A. No, sir; they do not.

Q. I suppose you don't want them to on account of the insufficiency of equipment?

A. They are not loaded in our equipment, Mr. Severance. We would be very glad to get them in Southern Pacific equipment at Deming or El Paso.

Q. Mr. Bissell, is any effort being made by the Southern Pacific to stimulate its orange traffic in that region by making quicker deliveries at Chicago and eastern points that are made over the Southern Pacific?

A. That are made over the Southern Pacific?

Q. Yes, by giving quicker service. Do you compete with them that way?

A. You asked me if there was any effort made on the part of the Southern Pacific.

Q. No, the Santa Fe. My voice is so bad I don't wonder that you do not understand.

A. Why, our physical condition has been such, the condition of our equipment has been such, that it has taken every effort
989 that we could put forth to take care of that business for the last two years—the last three years, I guess—and we have done the best we could to handle that business, and I think this last year we have satisfied the growers down there pretty well. But we have been in such shape, as I think you well know, that we have not been able to make any special record runs across the continent.

Q. I wanted to get at whether you had tried to give a quicker service than the Southern Pacific.

A. We have tried very hard to give them good service down there, and we have succeeded fairly well.

Q. And what is the schedule time that you endeavor to maintain on shipments of oranges from that valley to Chicago?

A. Eight days.

Q. Eight days?

A. Yes, sir.

Q. Do you know what time the Southern Pacific and Rock Island make?

A. I do not.

Q. Have you ever been told as to whether they try to make the same time as you do?

A. Why, I suppose they try to get it there as quick as I can.

Q. You try to get it there in eight days?

A. Yes, sir.

Q. Is it not a fact that they try to get it there in eight days, too?

A. You will have to ask them.

Q. What is that?

A. You will have to ask them. I don't know what their schedule is.

Q. You don't know?

A. No, sir.

Q. You don't know what it is?

A. No, sir.

Q. Have you ever had any conversation with Mr. Stubbs upon the question of the rapidity of that service?

990 A. Oh, I think more than likely I have, but I have had no conversation with him in regard to the time that I can recollect.

Q. You do not remember any talk with him in which you agreed between yourselves that you would endeavor, each of you, to make eight days?

A. No, sir, I have no recollection of any such talk.

Q. Or any other number of days?

A. No, sir.

Q. Do you happen to know anything of the service over the Salt Lake road?

A. I do not.

Q. You know nothing about that?

A. Nothing whatever.

Q. Do you know anything about the way the Salt Lake rates are made? Are they made after consultation with you?

A. That I could not say.

Q. You must be able to testify as to that.

A. The Salt Lake rates?

Q. Yes. Would they not have to talk with you before they make rates?

A. With reference to through car services?

Q. I mean the Salt Lake road east. I am speaking of the combination of rates over the lines of the Salt Lake line and the lines east of Chicago.

A. I think most of the rates were made before the Salt Lake came into the business. I think so, and I think there has been very little change in the business.

Q. Did the traffic managers have any consultation with reference to the rates to be put forward?

A. No, sir.

Q. Never did?

A. No, sir.

Q. No talk at all?

A. No, sir.

Q. Do you know who has charge of the traffic department of the Salt Lake road?

A. I understand Mr. F. A. Wann.

Q. Used to be with one of the roads out of Chicago?

991 A. Yes, sir; years ago he used to be with the Alton.

Q. He lives at Los Angeles now?

A. I understand he does, yes.

Q. You heard the testimony of Mr. Schwerin here yesterday with reference to the division to be made on Oriental traffic?

A. I heard part of it.

Q. In which he testified that for the last six months they have been giving it by alternate ships to your road and the other road. Mr. Schwerin testified that for the last six months the traffic arriving by the Pacific Mail line and other lines under his control into San Fran-

cisco were divided between your line and the Southern Pacific, first one ship to one line, and then one ship to another line. Were you consulted about that before that rule was established?

A. He testified it was the result of a talk between Mr. Luce, Mr. Chambers, and himself.

Q. Mr. Chambers did not consult you about that?

A. No, sir.

Q. How many years have you occupied this position with the road? How many years have you been in charge of the traffic department in the west?

A. Well, I have occupied this present position for about eight years—eight or nine years, I have forgotten which. Before that I——

Q. You were with the company then, at the time the steamships were running from San Diego to the Orient?

A. Yes, sir, I have been with this company for 24 years.

Q. I know you had been with them for a long time.

A. All the time they have been connected with the Pacific coast traffic.

Q. I knew you have been with them a long time, but I didn't know when you were first connected with them.

A. Yes, sir.

992 Q. Mr. Bissell, were you consulted by Mr. Schwerin, or any of these other gentlemen, with reference to the advisability of giving up the San Diego route and routing your Oriental traffic by way of San Francisco?

A. No, sir.

Q. You were not?

A. No, sir; not in that way.

Q. Well, in what way were you consulted, if at all?

A. Why, I was never consulted by any official of any steamship company, of the Pacific Mail, in regard to giving up the California and Oriental Steamship Co. We gave the California Steamship Company up because it was a failure.

Q. Yes, I understood that. And prior to the time you gave it up, had you any conversation with Mr. Schwerin or with Mr. Stubbs with reference to doing your business with the Pacific Mail or the companies coming into San Francisco?

A. Well, I don't remember to have had any conversation or personal talk with Mr. Schwerin or Mr. Stubbs with regard to that feature of the case. I have talked it over with our own people. I know that the Pacific Mail were anxious to do our business for us if we abandoned that field down there. At the time that steamship line was put on we didn't have our own line in here, you understand.

Q. I understand. How long after your line reached San Francisco did you quit the San Diego line?

A. My recollection is that it was about a year. My recollection is that that steamship line went into existence in 1899 and that our contract with them ended in 1902. I think it was in the spring in both instances. I think the contract ended in the spring of 1902.

Now, you will understand in regard to this that I have lost all the papers that I had. I looked yesterday to see if there was anything upon this and I could not find anything.

993 Q. Did you have this up with Mr. Morton, Mr. Bissell? You said you talked with your own people?

A. Yes, sir.

Q. Did Mr. Morton tell you that he had had it up with Mr. Schwerin and Mr. Stubbs?

A. I could not tell you exactly what Mr. Morton told me. I could tell you the general trend of the conversations that I had with him.

Q. Give us that.

A. They were to the effect—the general subject was under discussion at that time, Mr. Severance. We had propositions not only from the Pacific Mail but we had propositions from other people to go into the steamship business, and they were all of the same ilk as the California and Oriental—we were to hold the bag; the other fellow got the turkey and we got the crow, if there was any. We finally were told by our people that there was a prospect of our ability to do business out of the port of San Francisco, which, in my judgment, is the only port in this State where the business can be done. I talked it over with Mr. Morton several times. My recollection is that I told Mr. Morton that if we could make a satisfactory arrangement of that kind it was the best thing we could do.

Q. Well, was an arrangement made, and if so, who made it?

A. I could not tell you who made it, but such an arrangement was made, that we should do business——

Q. Everyone seems to agree that there was some arrangement made, and that there was talk about it, but we seem to be unable to find out who made the arrangement until this matter came up about six months ago. We know who did that. But before you came here to San Francisco do you know who it was, representing your company, that made an arrangement with the Pacific Mail,

994 and do you know what the arrangement was that this person made?

A. Yes, sir; I don't positively know, but I assume that Mr. Morton made the arrangement. The arrangement was to the effect that we were to have certain space on the Pacific Mail steamers leaving this port, and that we were to receive a portion of their inbound cargoes.

Q. What portion?

A. 25 per cent.

Q. 25 per cent?

A. Yes, sir.

Q. And you understood that that was the arrangement when you concluded to work through San Francisco?

A. Yes, sir.

Q. Has that arrangement ever been changed as to percentages?

A. Not to my knowledge.

Q. In what way did you get that traffic? Was it switched over to you by the Southern Pacific at the docks?

A. Yes, sir, it is the only way we can get it, Mr. Severance, the way the docks are arranged here. Are you familiar with the docks here?

Q. Yes, I understand that. It is unloaded on the tracks of the Southern Pacific and switched over to you?

A. Yes, sir. Our cars are put in on the Pacific Mail Steamship Company's dock and loaded there on the Southern Pacific track.

Q. Then the amount of traffic that the Pacific Mail Steamship Company agreed to give you, this 25 per cent of their traffic, is not determined by the amount of traffic you are able to give them, but you get 25 per cent of the traffic coming from the Orient, irrespective of the amount you give them?

A. Well, we had certain—we were assigned a certain amount of space. Of course the amount of business that we were able to give them would vary with our ability to fill that space.

995 Q. Exactly.

A. We did our utmost to fill all the space we could get.

Q. That is to say, they agreed to take a certain amount of tonnage?

A. Yes, sir.

Q. And if you furnished less, they took what you did furnish?

A. Took whatever we could furnish.

Q. Was there ever any instance where you had more tonnage than they cared to take?

A. Yes, sir.

Q. What did you do with it in that case?

A. We had to hold it.

Q. Up to the next boat?

A. When Mr. Schwerin chartered extra steamers—it was the time when there was a big run on cotton over there—he chartered extra steamers as fast as he could get hold of them, and they took that cargo.

Q. As I understand it, no matter whether you filled that space or not, they were bound under this arrangement to give you 25 per cent of the traffic destined for the east?

A. That is my understanding.

Q. And it is the best of your belief that they have done that, have they?

A. Yes, I think so.

Q. You have made no effort, have you, through solicitation of the shippers or consignees of that traffic, to secure more than 25 per cent?

A. East bound?

Q. Yes.

A. No, sir, we have not. That is all done on the other side, in the Orient, and we have nothing to do with it.

Mr. LOVETT. You do not mean east bound, you mean inward bound?

WITNESS. No, he asked me about inward bound.

Q. By "east bound," I mean east bound to the United States.

A. Yes, sir; what Mr. Schwerin designated yesterday as

996 inbound business.

Q. Inbound business. And so far as the Southern Pacific is concerned and so far as you know, the Southern Pacific have made no effort to secure more than the remaining 75 per cent?

A. So far as I know, no railroad company has ever solicited that business.

Commissioner LANE. I do not understand that this business is solicited, any of it, by the Southern Pacific and the Santa Fe, and they take 25 per cent for the Santa Fe and 75 per cent for the Southern Pacific. The Oriental business, for instance, is taken as a whole, is it not?

WITNESS. Yes, sir.

Commissioner LANE. And then divided?

WITNESS. Yes, sir.

Commissioner LANE. And is not solicited by any railroad?

WITNESS. That is correct.

Q. And neither the Southern Pacific nor the Santa Fe competes for it, other than to have this arrangement with the steamship line, that is true, is it?

A. That is true. The competition is between the Pacific Mail and the Suez route and the tramp steamers; it is over in the east.

Commissioner LANE. And the other lines here?

WITNESS. Yes, sir.

Commissioner LANE. Puget Sound lines?

WITNESS. Yes, sir.

Q. One other feature of that matter. Different kinds of commodities are different as to rates?

A. Are what?

Q. Rates differ as to different commodities. For instance,

997 you get more for silk than you do for bags, do you not?

A. Yes, sir.

Q. Does this 25 per cent mean 25 per cent of the tonnage or 25 per cent of the revenue?

A. Well, it was meant, as I take it, in my understanding of it, though I never had any explanation of that, but I assumed it meant 25 per cent of the general cargo that the Pacific Mail Company brought into this port, and if we ran short of tonnage on one class of goods we would run over on another.

Q. Then it is probably 25 per cent of the revenue?

A. Yes, it would probably work out that way. We never keep any check of it on the revenue. I stated that the 25 per cent was to be as near as we could get it.

Q. Then if in one cargo you get a lot of low price commodities they would make it up to you on another?

A. Even up on another, yes.

Q. How far to the east was most of this stuff moved that you got on the boats?

A. Well, there is a good deal of it goes to Chicago, and a good deal of it goes to New York. Chicago and New York are the principal points it goes to.

Q. Do you happen to know how that moves, the Southern Pacific part of it?

A. No, sir; I do not.

Q. Outside of these oranges in southern California, and the oriental traffic, is there any other traffic originating here in California or moving to the east from California concerning which you have an arrangement for division with the Southern Pacific?

A. I don't know of any.

Q. These two are the only ones you know of?

A. I don't know of anything else.

998 Mr. SEVERANCE. That is all.

Mr. DUNNE. That is all, Mr. Bissell.

By Commissioner LANE:

Q. One other question, Mr. Bissell. Does the arrangement about the division of oranges include other fruits?

Mr. DUNNE. What was that question?

Q. Does the arrangement in reference to oranges include other fruits?

Mr. DUNNE. What arrangement?

Commissioner LANE. That they won't interfere with each other's domain.

Mr. DUNNE. Go on and answer that briefly.

WITNESS. What other fruits do you mean?

Q. Any other fruits, Mr. Bissell.

Mr. SEVERANCE. Grapes and lemons, for instance.

A. It is all handled down there under the head of citrus fruits. We make no distinction between oranges, lemons, and pomelos.

Q. Does it include anything else besides citrus fruits?

A. I do not know of anything else. The arrangement, I suppose, is the arrangement he refers to, what he read from Mr. Stubbs' testimony.

Q. You know there was such an arrangement as that, do you not?

A. I explained to Mr. Severance all I know about it.

Q. Does that arrangement cover anything else but citrus fruits?

A. No, sir.

Q. Nothing else?

A. No, sir.

Q. It does not touch any other commodity?

999 A. I don't want to mislead you on that, Mr. Commissioner. The statement that I made was that we never pirate on one another's preserves down there, we never do it on any other freight. We can take freight from their track and take it over to ours, but we can't do it without hauling the freight, of course.

Q. So you can't reach out for any business from them; that is what I understand, is it?

A. Yes, sir, we try to get all the business from them we can.

Q. All the business of every kind excepting on citrus fruits?

A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. But you have come to an understanding as regards citrus fruits. Does that touch canned fruits?
A. No, sir.
Q. It does not touch canned fruit. You fight for canned fruit, do you?
A. The only business that we can be held to be included in what you call an arrangement down there is business for which special equipment is required, and it takes all of the equipment we have got to take care of the fruit we have to handle for our own rails. We take canned goods in any kind of equipment.
Mr. SEVERANCE. There is one other question that slipped my mind that I want to ask. Do you want to ask any further questions, gentlemen?
Mr. DUNNE. No, go ahead, Mr. Severance.

By Mr. SEVERANCE:

Q. Mr. Bissell, do you remember a conversation you had with Stubbs about the time your line came into San Francisco upon the subject of this State toll? That was under discussion here day before yesterday?
1000 A. No, I don't remember ever having discussed the subject of State toll with Mr. Stubbs.
Q. You never had any talk with him on the subject?
A. I don't remember any such talk. You say at the time our line came in?
Q. About the time you came in here, yes, sir.
A. I have no recollection of any talk with him.
Q. Did you not have a conversation with Mr. Stubbs in which you called his attention to the fact that the Southern Pacific was bringing a good many commodities in here by the line this side of the bay, and that it would be necessary for you to absorb that charge to compete with them? Did you not urge Mr. Stubbs to take out that charge on the business coming up this side of the bay for that reason, and did he not tell you he would take it out?
A. Take out the charge for State toll?
Q. The extra 5 cents on the stuff that did not come across the bay?
A. No, sir; I do not remember any such conversation.
Q. You never had a talk with Mr. Stubbs about that?
A. I have no recollection of ever having discussed the subject with Mr. Stubbs.
Q. In any way?
A. In any way.
Q. Or at any time?
A. Or at any time.

By Mr. DUNNE:

Q. Mr. Bissell, I would like to ask you a question or two about this orange situation. The area in Southern California devoted to the production of oranges is approximately distributed equally between the two initial lines, is it not?

A. It is.

Q. There is some territory between San Bernardino and Los Angeles, referred to by Mr. Severance, where the tracks run tolerably close together?

A. Yes, sir.

1001 Q. The oranges are collected in packing houses, are they not?

A. Yes, sir.

Q. Some packing houses are local to your rails and some packing houses to the rails of the Santa Fe. Is not that correct?

A. Yes—to the Southern Pacific you mean?

Q. To the Southern Pacific, I should say, yes.

A. Yes, sir.

Q. Now you made the statement to Mr. Severance that the general policy (and you used the word "policy")—that the general policy still remains that you shall not go upon the rails of the Southern Pacific to take oranges out of one of their packing houses, and reciprocally they will not scalp oranges from your packing houses. That is the general policy, is it not?

A. Yes, sir.

Q. I want to ask you whether, outside of that general railroad policy which obtains in that territory, there is anything between your company and the Southern Pacific in the nature of a contract and bargain that you shall not do those things?

A. There is absolutely nothing.

Q. Are you not at entire liberty, to-morrow or the next day, to go upon their rails and scalp oranges local to their packing houses if you so wish?

A. We are, so far as being limited with any agreement with the Southern Pacific.

Q. Yes, sir. Do you understand as a railroad man, or as a layman, for that matter, that there is any law in this land that compels you to compete for that kind of business?

A. Not in that way.

Mr. SEVERANCE. Do you want the legal opinion of the witness?

Mr. DUNNE. I want to clear up this situation. I don't
1002 want any misconception about it. It was thoroughly exploited in the Orange Routing case. That is all.

By Mr. SEVERANCE:

Q. Just a minute. In view of the fact that your legal opinion has been asked by my friend upon a question a moment ago let me ask you this: You say there are packing houses on your tracks and packing houses on the Southern Pacific tracks. Have you felt that you

were at liberty legally to put solicitors in the field and try to influence the growers to patronize the packing houses on your tracks as against the ones on the other track, and would you do that?

A. Yes, sir.

Q. Do you do that?

A. Yes, sir.

Q. You do that?

A. Yes, sir.

Q. Right along?

A. Yes, sir, try to get them to build packing houses on our tracks.

Q. Do you keep soliciting agents out down there to get oranges put into packing houses upon your tracks against those upon Southern Pacific tracks? Do you do that?

A. Ordinarily. Those packing houses, if I can answer this question this way——

Q. Any way you desire.

A. Ordinarily those packing houses are built by the different associations, and we never have very much success in asking a man from one association to take his oranges over and put them in a packing house that belongs to another association. But I think we do what you wanted to know about there. Whenever an association is going to put up a packing house, we try the best we know how to get them to put their packing houses upon our line, so as to get the business.

1003 Q. Do you do that, although it may result in giving you more than 50 per cent of the business?

A. Yes, sir. I don't understand that the business down there is divided 50 per cent and 50 per cent. I understand that it divides about equally.

Q. And you want it to remain that way?

A. No, I don't want it to remain that way. I would like to have a different deal on it. I would like to have more of it if I thought I could get it.

Q. You would like to have more of it if you thought you could get it without a row?

A. Without getting into complications.

Q. And without getting into competition?

A. I think we are competing for it, Mr. Severance.

Mr. Severance. That is all.

1004 Mr. Severance. I next offer in evidence, pursuant to our stipulation, the testimony of E. E. Calvin, a witness before the Interstate Commerce Commission, who testified on January 31, 1907, at the city of San Francisco. I understand that it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Calvin were upon the stand giving the same testimony.

Mr. Lovett. Yes.

E. E. CALVIN

testified:

Examined by Mr. SEVERANCE:

Q. Where do you live, Mr. Calvin?

A. I live in Oakland.

Q. And what is your position?

A. Vice-president and general manager of the Southern Pacific Company, Pacific system.

Q. Over what extent of the line of that company does your jurisdiction reach?

A. North to Ashland, east to Sparks, and southeast to the Rio Grande.

Commissioner LANE. A little bit louder, if you please.

WITNESS. Shall I state it again?

Commissioner LANE. What was the last? How far southeast do you go?

WITNESS. To the Rio Grande.

Q. Do you mean the Rio Grande River?

A. Yes, sir. It is about three miles this side of El Paso.

Mr. LOVETT. The Texas boundary line.

Q. So that you have charge of the lines from here north to Ashland, and to the east as far as Sparks, and southeast to practically El Paso?

A. That is it.

1005 Q. Who is the operating man that has charge of the Southern Pacific lines north of you and beyond you? Is it Mr. O'Brien?

A. Yes, sir.

Q. Does Mr. O'Brien report to you?

A. No, sir.

Q. You have no relations of any kind with Mr. O'Brien?

A. No.

Q. Who is the general manager of the lines east of Sparks?

A. Mr. Bancroft.

Q. Mr. Bancroft, of Salt Lake City?

A. Yes, sir.

Q. He is also the vice-president of the Oregon Short Line, is he not?

A. Yes, sir.

Q. Your duties are confined largely to the Southern Pacific system?

A. Yes, sir.

Q. You do not have jurisdiction over any part of the Short Line or the Oregon Railroad & Navigation Company?

A. No, sir.

Q. And to whom do you report, Mr. Calvin?

A. To Mr. Kruttschnitt, sir.

Q. To Mr. Kruttschnitt?

A. Yes, sir.
Q. Do you also report in any matters to Mr. Harriman direct?
A. Sometimes, in special matters.
Q. Special matters?
A. Yes, sir.
Q. But in the ordinary routine of your business, you report to Mr. Kruttschnitt?
A. Yes, sir.
Q. Does the traffic manager here report to you or Mr. Stubbs?
A. He reports to Mr. Stubbs, sir, as I understand it.
Q. Are your duties wholly in connection with operation?
A. Yes, sir.
Q. Do you have anything to do with the traffic at all?
A. I am not responsible for traffic.
1006 Q. How many divisions of the road are there in your jurisdiction? You have general superintendents, have you not?
A. Yes, sir; two.
Q. You have two?
A. Yes, sir.
Q. Over what particular territory do they have jurisdiction?
A. What we call the northern district is comprised of three divisions, all north of Santa Barbara and Fresno. The other general superintendent's territory, which is known as the southern district, comprises the lines south of these two points.
Q. How long have you been with the company here?
A. At this place?
Q. Yes.
A. About two years.
Q. And prior to that time where were you?
A. I was a year at Portland.
Q. And before that?
A. 7 or 8 years at Salt Lake.
Q. What was your position at Salt Lake?
A. General superintendent for a short time, and afterwards assistant general manager.
Q. Of the Oregon Short Line?
A. Yes, sir.
Q. Then you have been connected with the Southern Pacific Company how long? Only the two years, or also the year that you were in Portland?
A. The year I was in Portland I had charge of the Southern Pacific lines in Oregon, north of Ashland.
Q. Did you occupy the same position at Portland that Mr. O'Brien occupies now?
A. Precisely.
Q. How is that?
A. Yes, sir.
Q. That is, you had jurisdiction over the Southern Pacific lines in Oregon north of Ashland and over the O. R. & N.?

A. Yes, sir.

1007 Q. Prior to 1901, when the Union Pacific purchased the stock of the Southern Pacific, there were no officers, were there, who had jurisdiction over any parts of the Southern Pacific system, and at the same time over the Union Pacific, Oregon Short Line, or O. R. & N.?

A. Not so far as I know.

Q. In those days the lines were operated independently of each other; that is, the Southern Pacific was operated independent of those other three lines?

A. So far as I know.

Q. And in those days you were an official of the Oregon Short Line?

A. Yes, sir.

Q. Do you know whether at that time, when you lived at Salt Lake City and were an official of the Short Line, and prior to 1901, there was competition existing between the Southern Pacific and the lines running northwesterly to Portland, the Short Line and the O. R. & N.?

A. No, sir; I don't know as to that. I had nothing to do with traffic management.

Q. You had nothing to do with traffic?

A. No, sir.

Q. You never had?

A. No, sir.

Q. Your duties were confined simply to operation?

A. Yes, sir.

Q. Are you the head of the car clearing house system?

A. No, sir.

Q. To whom do the car service agents make reports?

A. You mean on the Southern Pacific?

Q. Yes.

A. We have an officer with the title of superintendent of transportation, and that officer reports to me.

Q. Up in Portland the other day we found an official by the name of Meyer there who was car service agent of the O. R. & N. and Southern Pacific lines in Oregon.

1008 A. That corresponds to our office of superintendent of transportation.

Q. It corresponds to that, does it?

A. Yes sir, only our office carries with it little more authority than does his, that is all.

Q. That official reports to you, does he?

A. Yes sir.

Q. And he has to do with the distribution of cars?

A. Only in a general way, he has charge of the details of it entirely.

Q. Who else has charge of them?

A. No one.

Q. Have you anything to do with that?

Mr. DUNNE. I think you misunderstood him. I think he understood you to ask if he himself had charge of the distribution.

Q. No, I asked him if this superintendent of transportation had. What is his name, Mr. Calvin, your superintendent of transportation?

A. Richardson.

Q. He lives here in San Francisco.

A. Yes sir.

Q. Has he charge of the distribution of cars?

A. Yes sir.

Q. On the Southern Pacific system?

A. The territory that I cover, yes, sir.

Q. The same territory that you cover?

A. Yes sir.

Q. He reports to you, does he not?

A. Yes sir.

Q. And in the handling of cars he treats all the cars of the Southern Pacific, Union Pacific, Short Line, and O. R. & N. as company cars, does he not, as distinguished from outside cars?

A. Yes sir.

Q. How long ago was that policy adopted?

A. Well, I don't recall the exact date; I think about two years ago.

1009 Q. By whose direction?

A. I think it was by general agreement of all the general managers of all those lines. I know the matter was discussed in a meeting of general managers.

Q. Where was this meeting held? Here or in Chicago?

A. In Chicago, I think.

Q. In Mr. Kruttschnitt's office?

A. Yes sir.

Q. Was not that system established over all those allied lines under instructions from Mr. Kruttschnitt?

A. It was after conference with the general managers.

Q. The orders came from him?

A. Yes sir.

Q. The man in Portland, Mr. Meyer you say, reports to Mr. O'Brien, does he not?

A. I think he reports to the general superintendent, there is only one general superintendent of that system.

Q. Of the whole system?

A. The lines centering at Portland.

Q. He reports to the general superintendent and the man here reports to you?

A. Yes sir.

Q. Where does the Union Pacific car agent report?

A. I could not say positively, but I assume to the general superintendent.

Q. What I want to get at is this: Is there not any one central place to which these reports are made, so that you know the situation of the cars of the whole system?

A. The general direction of the movement of cars on each line is in the hands of the general manager.

Q. I understand that. But haven't you any central bureau that is constantly in touch with these various car service agents or superintendents of transportation since you adopted this system of
1010 treating the cars of all these four lines as cars of one company?

A. Well, there is a sort of car clearing house that just keeps track of the mileage of the cars, but not of the distribution of them.

Q. Where is that clearing house located?

A. In Chicago, I think.

Q. In Mr. Kruttschnitt's office?

A. Well, I am not positive as to that. It does not come into the matter of operation and cuts no figure in handling of the equipment.

Q. You do not know about that?

A. It is an accounting matter.

Q. Now, under the car service rules, when you have an eastern car which comes out here loaded, it is you duty to get that car back to the initial line, is it not?

A. Yes, sir.

Q. That rule is abrogated, is it not, in the case of the Union Pacific equipment. For instance, you treat that the same as Southern Pacific equipment?

A. You treat the Union Pacific equipment just the same as Southern Pacific equipment as to loading.

Q. That is what I am talking about. Now, is there not some means by which your department here, the one over which you have jurisdiction, keeps in touch with the same department of the Union Pacific we will say, with reference to cars?

A. In the event that there is a shortage of any class of equipment, yes.

Q. How do they do it, by correspondence?

A. Yes, sir.

Q. Or are reports interchanged?

A. No sir. There is a report interchanged showing any surplus equipment that there may be on in any general manager's territory. That is the only regular report that is made.

1011 Q. And to whom are these reports sent? Are they sent to a similar official of the other divisions?

A. Yes sir, sent to all the other general managers.

Q. And duplicates sent to Mr. Kruttschnitt?

A. Yes sir.

Q. What is the nature of the reports that you make to Mr. Kruttschnitt?

A. In regard to cars?

Q. Oh, generally, Mr. Calvin. How often do you report, and concerning what matter?

A. Any matter of any importance that I want advice on.

Q. Any matters of any importance. Well, for instance, you want additional equipment, or you want steel rails, or anything of that kind. Do you communicate that fact to Mr. Kruttschnitt.

A. Yes sir.

Q. What other matters, in a general way? Can you give the classes of matters concerning which you make habitual reports to Mr. Kruttschnitt?

A. Any matter affecting the policy of the property.

Q. And do the other general managers of the Union Pacific, and the Short Line, and the O. R. & N. do the same, so far as you know?

A. So far as I know.

Q. That is done, is it, for the purpose of maintaining a uniform policy throughout the entire system of Harriman lines, so called.

A. Well, I don't know the reason for it.

Q. But they do it?

A. I think so.

Q. Mr. Lovett suggests that I ask you this: If you had a shortage of cars in your territory, and you have reason to believe that Mr. O'Brien, or Mr. Bancroft, or some of those other gentlemen occupying positions akin to yours on other divisions, have cars, how do you manage the matter?

1012 A. I take it up direct with them.

Commissioner LANE. What was that? I did not hear.

WITNESS. I take it up direct with them.

Q. And do they send you empties?

A. Yes, sir.

Q. How is that?

A. Yes, sir; if they can.

Q. And Judge Lovett suggests that if that is not successful, you probably take it up with Mr. Kruttschnitt?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. He is over all you gentlemen—he is the manager to whom you can all appeal?

A. Yes, sir.

Q. Whose directions you will take?

A. Yes, sir.

Commissioner LANE. Would it not facilitate things in the matter of car service, Mr. Calvin, if you had in connection with your car service or your car clearance one man who was at the head of that bureau for all of the roads?

WITNESS. I think it would.

Commissioner LANE. And who would have control over the handling and disposition of the equipment?

WITNESS. Well, only as to the division of it between the different sections of the country, after considering the requirements and the

importance of the traffic. I understand that is contemplated by all of the western railroads, a clearance of that sort.

Commissioner LANE. Then in that case you would not apply to the manager of the road in Portland, but you would apply to the head of that bureau?

WITNESS. I assume so; yes, sir.

Commissioner LANE. You have only applied the car-clearance idea on your system up to the present time to the extent that
1013 all equipment that belongs to any of the independent roads that have been consolidated is treated as if it belonged to any one?

WITNESS. Yes, sir.

Mr. SEVERANCE. That is all.

Mr. LOVETT. That is all.

1014 Mr. SEVERANCE. I next offer in evidence, pursuant to our stipulation, the testimony of H. A. Jones, a witness before the Interstate Commerce Commission, who testified on January 31, 1907, at the city of San Francisco. I understand that it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Jones were upon the stand giving the same testimony.

Mr. LOVETT. Yes.

H. A. JONES

testified:

Examined by Mr. SEVERANCE:

Q. You live in San Francisco, Mr. Jones?

A. Yes, sir.

Q. You will have to pardon my cold and voice.

A. Certainly.

Q. And what is your position?

A. I am freight traffic manager of the Southern Pacific Company's operated lines, or lines operated for the Southern Pacific Company.

Q. You will have to speak a little louder.

A. Did you hear me?

Commissioner LANE. I did not. Speak a little louder, Mr. Jones.

Q. What did you say, again, your position is?

A. I am freight traffic manager for the lines operated for the Southern Pacific Company.

Q. How long have you occupied that position?

A. Since the 1st of September, 1906.

Q. And whom did you succeed?

A. Mr. William Sproule.

Q. He resigned from the service, did he not, to take a position with another corporation?

A. Yes, sir.

Q. Prior to your incumbency of this office, what was your
1015 position, or what was your business?

A. I was traffic manager of the G. H. & S. A. Railroad Company and——

Q. In Texas?

A. Yes sir, in Texas, and what is known as the Central Lines.

Q. Are they part of the Southern Pacific system?

A. Sir?

Q. Are those lines part of the Southern Pacific system?

A. No, sir; they are operated by themselves.

Q. Well, I understand with regard to the Texas laws, they have to be operated by themselves—the stock of those companies is owned by the Southern Pacific, however.

A. They are connections of the Southern Pacific lines, yes, sir.

Q. Either Judge Lovett or Mr. Harriman is the president of it?

A. Judge Lovett is president of one of them and Mr. Harriman is president of another.

Q. So that your personal relations with the officials did not change very much when you came from Texas out here, although you were working for a different corporation?

A. Yes, sir; there was considerable change in my relations.

Q. Has your experience here on the coast been confined wholly to a period between last September and the present?

A. My experience has been——

Q. On the coast, Mr. Jones.

A. I had never lived on the coast here.

Q. Who is your superior officer in traffic matters?

A. Mr. J. C. Stubbs.

Q. And Mr. Stubbs is the man for whom you work.

A. Yes, sir.

Q. What territory is embraced within your jurisdiction?

A. The line from the Rio Grande to San Francisco, and San Francisco to Portland, and from San Francisco to Ogden.

1016 Q. Then your jurisdiction extends as far as Portland, does it?

A. Yes, sir.

Q. It does not stop at Ashland?

A. No, sir.

Q. You know Mr. Miller, of Portland, do you not?

A. Yes, sir.

Q. And Mr. Miller, at present, is the general freight agent of the lines in Oregon?

A. He is, sir. He is general freight agent of those lines.

Q. He is a subordinate of yours then, is he?

A. Yes, sir, so far as those lines are concerned.

Q. And reports to you?

A. Yes, sir.

Q. He is at the same time general freight agent—I think that is the correct title—of the Oregon Railroad and Navigation Company?

Q. And to whom does he report in that capacity?
A. Well, I could not answer that positively; I do not know.
Q. He does not report to you?
A. No, sir.
Q. Is there any competition in business out of Portland between the company with which you are affiliated and in connection with business concerning which Mr. Miller reports to you and the traffic over the O. R. & N.?
A. No, sir.
Q. No competition at all?
A. No, sir.
Q. There used to be, I believe, but that is before your day?
A. I don't know whether there was or not.
Q. You simply know there is no competition in business now?
A. There is none now, no.
Q. And you do not move any business from the east to Portland by way of Sacramento?
A. Not that I know of.
Q. That is, that comes here through the Ogden gateway?
A. No, sir.
1017 Q. And you personally do not know that that traffic, or part of that traffic, formerly moved that way?
A. No, sir, I do not.
Q. Before you came to this country?
A. No, sir.
Q. Do you have any one under your supervision, under your charge—I do not mean "charge" or "supervision" either, but is there any official under you here who occupies a similar relation to the lines in California to that which Mr. Miller does in Portland?
A. Mr. G. W. Luce.
Q. Mr. Luce?
A. Yes, sir.
Q. And over what extent of the line does Mr. Luce's jurisdiction extend?
A. Over all of the lines except east of Sparks and north of Ashland.
Q. You haven't anything to do with the traffic east of Sparks, have you?
A. Yes, sir.
Q. Oh, you have?
A. Yes, sir.
Q. And to what point?
A. To Ogden.
Q. Ogden. Who is your subordinate east of Sparks to Ogden?
A. Mr. Reeves.
Q. Where does he live?
A. He lives in Salt Lake.
Q. What relation, if any, does Mr. Bancroft have to that part of the system?
A. Well, he is manager, I believe.

Q. He is in the operating department?
A. Yes, sir, he is in the operating department.
Q. Mr. Jones, are you also an official of the Northwestern Pacific?
A. No, sir.
Q. You have nothing to do with that line?
A. Nothing to do with it.

Q. It appears by the testimony here that from time to time
1018 rates are increased or lowered between here and Portland. Under whose authority is that done? Under whose immediate direction is that done?

A. Well, in fixing rates, we have a basis that the rate clerk has adopted for that, a basis—either a differential, higher or lower than certain rates, or a mileage basis, or a rate to the terminal and a rate back. In a change of rates, if a line were to change a rate to-day the rate clerk would naturally change his rate, unless he had instructions otherwise. That is how rates are generally made.
Q. I am familiar with that fact, but I want to apply it to this particular case.
A. I could go on and say that I suppose that in any change it would be natural, if either line changed the rates, for the other to either raise or lower their rates accordingly on that basis.
Q. Now, take the line of road over which you preside, so far as traffic is concerned, between here and Portland.
A. Yes, sir.
Q. Mr. Schwerin testified yesterday that he had recently raised the rates by boat between these two points, San Francisco and Portland?
A. Yes, sir.
Q. And he said that he presumed that the rail rates would go up, as they ordinarily do. Is that the fact—dependent upon the boat rates?
A. That would be the natural result on account of the basis I have mentioned. Unless the rate clerk had orders otherwise he would advance the rate.
Q. I assume that, as a matter of fact, where there are two lines such as the boat line between here and Portland, and the rail line between here and Portland, and there has by some agreement been established a differential between the two, if either party to
1019 that arrangement changes the rate, the other party, as a matter of course, changes the rate so as to maintain the same differential?

A. That would be the natural result.
Q. That would be the natural result?
A. Yes, that would be the natural result.
Q. So that if, as Mr. Schwerin testified yesterday, he found it necessary or advisable to advance the boat rate because the stevedores and longshoremen and the officers on his ships were demanding and receiving higher wages than they had theretofore received, your

rail rates would go up automatically because of that fact, would they?—because of this advance?

A. Yes, sir.

Q. Now, Mr. Jones, do you think that that is a fair proposition to the public, that because Mr. Schwerin has to charge higher rates because of increased cost of service, that your rail rates should go up without any corresponding increase in your expense?

A. Why, yes; I don't see anything unfair about it.

Q. You think it is fair. I just wanted your idea about it. Now, there is no other way to move traffic between here and Portland other than by the boat lines, some of them, or your line. Is that true?

A. That is all.

Q. It is not at all feasible to carry it away around the other way by rail?

A. No, not around by Ogden.

Q. It could be carried around by rail the other way to Portland from here?

A. Of course, they could do it, but it is not probable that they would do it.

Q. I mean, it would be physically possible?

A. Yes, but it would not be a sensible way.

Mr. LOVETT. Any more than it would be sensible to carry it to Portland by way of Sacramento.

Mr. SEVERANCE. It is a little more extreme case, Mr. Lovett, than to take freight to Portland by way of Sacramento.

Q. Who is the rate clerk that fixes those rates? Do you know?

A. We have several. I don't know who has direct charge of those particular rates. We have 6 or 8 of those rate clerks. They are divided up, you know, into different portions of the line.

Q. Then, as I take it, Mr. Jones, the making of rates between here and Portland is something that involves no discretion on the part of the manager of the traffic department at all, but it is laid down as a general rule, and the rate clerk, any one of six or eight of them, wherever they happen to have jurisdiction, shoves the rate up and down automatically?

A. Unless he is instructed otherwise, that is the understanding. You see, these rates are put in for the purpose of moving any traffic that may be tendered us. We have found by experience that it is better to have rates in force than to have our agents telegraphing us all the time for rates. Therefore, they are fixed, as far as possible, and the basis is fixed.

Q. You are obliged under the interstate commerce act to have the rates fixed as well. It is not an act of grace on your part?

A. I was just saying that was our experience, that it is a better way to handle it. We had it in long before the interstate commerce act.

Q. It is quite essential that you do that now under the interstate commerce act?

A. If I understand the law we need not put the rates in at all.

Q. Need not fix any rates?

A. No, sir.

Q. That is it. You do have rates on all classes of traffic?

A. Yes, sir; you will find rates on all classes of traffic.

1021 Q. And those rates of course you collect. You collect the published rates, and change them in the manner provided by law?

A. Yes, sir—try to do that.

Q. It appeared by the testimony given in Portland the other day by Mr. Kelly, of the Booth-Kelly Lumber Company, that you had a rule as to shipments from Oregon points to the Bay of San Francisco, which he said was peculiar to this line, namely, that rough, green, common lumber bore a certain rate, which I believe he said was $3.10 a ton—a thousand feet, I mean—and that ties, which are the same class of timber exactly, except that they are 8 feet instead of being longer, bear a rate of $5 a thousand. Now, were those two rates put in under your direction?

A. No, sir.

Q. Do you know anything about those rates?

A. I do not.

Q. Can you give me any idea who the person is that established that curious difference between ties that might be needed down here and ordinary lumber?

A. I don't know how long it has been, and I could only tell by examining the tariff.

Q. You know nothing about that?

A. No, sir.

Q. That was done before you were in your present position? At any rate, it was not done under your direction?

A. That was not done under my jurisdiction or direction, no, sir.

Q. You have a pretty good knowledge of rate making, I assume; that is, the general principles governing rate making and classification?

A. Yes, sir.

Q. Is not that a very unusual classification to make?

A. Why, no. There are a great many lines that won't quote a rate on ties at all.

1022 Q. Will you explain to me any reason why ties which are made out of rough, green, common timber or lumber should bear a higher rate than the same kind of timber or lumber where it is 16 feet long, we will say, instead of 8 feet long? Can you give me any reason for it?

A. Well, there may be a reason for it.

Q. I say, can you suggest any reason, in the nature of things?

A. It would depend on the conditions and circumstances surrounding it.

Q. What? What circumstances?

A. Well, there might be conditions and circumstances that would control the movement of ties. For instance, a road might want the ties for its own use.

Q. That is what I want to get at. That is, the railroad might make that kind of a rate so as to prevent some other railroad getting ties from a particular region?

A. No, sir; it does not prevent them, because there is a rate on them.

Q. It makes it more expensive?

A. Yes, it makes it more expensive.

Q. And you think that would be a fair and reasonable thing to do, to confine a manufacturer of lumber to your own road, we will say, as a consumer, instead of giving him access to other markets?

A. I don't think that would confine him to our line.

Q. Your line and lines in the immediate vicinity, of course?

A. I don't see how that would confine him.

Q. Take this concrete case we have presented here. You put in a certain rate on ties?

A. Yes sir.

Q. And that road is run through a certain class of timber. Now, you say that might be done because the road might want the ties for its own use. You consider that a perfectly legitimate way to deal with the patrons of your road, to put a——

1023 A. I don't say we did that.

Q. No, I am not saying you did that. You were giving that as a reason which might justify the existence of the rate in question, as I understood—which might justify a railroad in doing that?

A. Lots of railroads do that.

Q. Lots of railroads do that. I want to ask you if you think that is a fair way for a public service corporation to deal with a manufacturer along its lines?

A. I think it is a fair thing for anybody to take care of himself first.

Q. Very well. That is what I want to get at. Then you think in all cases it is perfectly fair for the Southern Pacific to take care of itself first without reference to the public or to other railroads?

A. I did not say that.

Q. But is not that the natural result of your statement?

A. It is not possible, in my opinion, for a road to prevent anybody from buying ties wherever they want to. They might not buy them on that particular line, but they can buy them somewhere else.

Q. Suppose the manufacturer, Mr. Jones, is located on that particular line, but that he might be ambitious to sell to a number of different people, possibly?

A. Yes sir.

Q. You think if your line, if your road, wants ties it is perfectly legitimate to make a rate which would confine that manufacturer's market to your road, do you?

A. I do not. I don't think they would do it.

Q. What did you mean by your previous answer?

A. Well, I said I thought they ought to take care of themselves, but I do not think they ought to make a rate so he could not move them.

Q. Well, but you would make a rate so it would be unprofit-
1024 able for him to move to some other point other than to sell them to you?

A. That is a matter I cannot judge of, whether it would be profitable or unprofitable.

Q. At any rate, you see no objection to making a rate which would discriminate in favor of yourself as against somebody else who might want to buy?

A. I would not state that generally without knowing the circumstances and surroundings.

Q. But you did state. You do not know the circumstances that gave rise to this curious rate up there?

A. No sir.

Q. You stated that, and you suggested this as one reason?

A. No, sir; I think you asked me the reason; I didn't suggest it.

Q. You said that might be a reason?

A. Might be a reason, yes.

Q. The cost of the service rendered is one of the bases upon which rates are fixed, is it not?

A. Yes sir.

Q. Is it any more expensive for you to handle ties of a certain size than it is to handle 16-foot lumber?

A. No sir, and it is no more expensive to handle a car of gold than it is to handle a car of lumber.

Commissioner LANE. A little louder, please.

WITNESS. I say it is no more expensive to handle a car of gold than it is to handle a car of lumber.

Q. That is not a direct answer, I think, Mr. Jones.

A. I say no.

Q. You say "no"?

A. I do.

Q. Is it not a fact that you can use your equipment to better advantage in handling ties than you can in handling longer timber or lumber?

A. Why, I should think not. We don't load or unload them.

Q. I know, but can you not get a heavier load with ties than
1025 you can with certain kinds of long timbers or lumber?

A. No, sir, not if the car is properly loaded.

Q. You can't?

A. No sir.

Q. There are a good many kinds of timber for which you can not use box cars?

A. Yes, sir. But you can load them on flats.

Q. But you can load the ties in box cars?

A. Yes sir.

Q. And fill the car full?

A. Yes sir.

Q. So if you happen to have box cars——

A. You can't load long timbers in box cars. I beg your pardon.

Q. No, I know you can't, and I am just getting at that very thing. So if you have lots of box cars handy for traffic it is more to your advantage to ship ties than long timbers?

A. That is a condition that has not existed for a good many years.

Q. That would be the case if you happened to have more of them?

A. If you happened to, yes.

Q. I think you testified a moment ago that you can give no reason, in so far as freight rates are based upon the cost of service, why railroad ties should have a higher rate than rough lumber?

A. That is not the only thing makes freight rates, as I explained.

Q. We have got two things that make freight rate, that is, first, the railroad taking to itself some advantage, as in the case of the railroad itself taking the ties; and, second, the cost of service. The first, you say, might affect the rate. The second would not, because there would be no difference. Now it is recognized that the value of the commodity transported is an element in making up the rate.

A. It is very often taken into account.

1026 Q. And reasonably so, as you suggested about the car of gold and the car of lumber. Now, a carload of ties of the same weight is not as valuable, is it, as a carload of lumber?

A. Well, no. I say "no;" I don't know that because different lumber is of different value. It would all probably take the same rate. I can't tell between the value of lumber—I don't know what it is.

Q. You would not say, would you, that ties which can be made out of short stuff that may be left over are more valuable than longer timber?

A. There are different kinds of ties. Some are worth more than others.

Q. I understand that.

A. And some of the ties are worth more than the lumber this year.

Q. Yes, that might be—more than some lumber.

A. Yes, sir.

Q. But you would not say that the difference between $3.10 and $5, a difference of nearly 50 per cent, an increase of nearly 50 per cent—you would not say that that could be accounted for on account of the extra value of ties?

A. We don't take the value into consideration in making rates on lumber.

Q. Oh, you don't?

A. No, sir.

Q. Then you don't take the cost of service into consideration and you don't take the value into consideration?

A. We do take the cost of service into consideration in making rates.

Q. You have admitted there would be no extra expense?

A. I don't think you could figure the difference between handling a car of ties and handling a car of anything else.

Q. Then, can you give me any reason that could have actuated that difference in those rates except the one you have first
1027 suggested, namely, that the Southern Pacific might want to get the ties for its own tracks?

Mr. LOVETT. I didn't understand him to say that.

WITNESS. I did not say that.

Q. I understood you to say that.

A. No; you asked me the question.

Q. Well, you can give me any other possible explanation except that possible explanation? Put it like that.

A. Well, I stated, I think, that circumstances and conditions made rates generally. But I don't know of any condition or circumstances, not being acquainted with this transaction; I don't know what would influence it.

Q. You would be unable to tell?

A. I could not tell.

Q. Now, in making through rates to the east, for instance, do you figure in that, or is that under the charge of Mr. Stubbs?

A. Making rates to the east?

Q. Through rates, that is?

A. We make them in this office.

Q. You make them here?

A. Yes, sir.

Q. And you make them after conference with the other roads, do you not?

A. Why, you can't make any rates without consulting your connections.

Q. I don't mean your connections; I mean your competitors, if you have any?

A. Why, yes, we consult them very often about rates.

Q. That is universal, is it not?

A. Yes, sir, universal with all lines.

Q. As to the rates on the Pacific coast. Take the rates from
1028 California. You never change any rates on any commodity from California points for the east, except after a consultation and agreement with the Santa Fe people, do you?

A. Yes, sir; we do change rates without conference with the Santa Fe people.

Q. Will you name some rate you have changed without consulting them first?

A. No, sir, I could not name any particular rate, nor can I name any that we did consult them on.

Q. Can you think of any instance since you have been here, Mr. Jones, when the Southern Pacific Railroad has changed a rate to the east without first consulting the Santa Fe?

A. I don't remember that we have changed any since I have been here.

Q. Then you don't know?

A. I don't know that there has ever been or not.

Q. As far as you recall there has been no change?

A. As far as I know.

Q. Have there been any changes made in rates between here and points south that are reached by the Santa Fe and by the Southern Pacific?

A. From here to the south?

Q. Yes, to Arizona, for instance, we will say?

A. I don't know whether there have or not.

Q. You don't know of any changes?

A. No, sir.

Q. You don't keep track of the rates, Mr. Jones?

A. I have not been able to keep up with the details, no, sir.

Q. So as to what the rates are, or as to whether any rates have been changed since you were here, you don't know?

A. No, sir, unless there is something unusual about it, my attention would not be called to it.

Q. What are your duties, Mr. Jones?

A. Well, I have general supervision of the traffic, of the freight traffic of the lines, and I am consulted as to the policy and
1029 about handling the business generally.

Q. You don't have anything to do with the movement of traffic. That is in the hands of the operating department?

A. No, sir, I don't move it.

Q. And you don't know of any rates that have been changed since you have been here?

A. No, sir, I don't know of any that have been changed.

Q. You don't have anything to do with furnishing cars, do you?

A. No, sir.

Q. Then what do you do?

A. Well, I have been trying to tell you what I am doing. Of course, I am supposed to be consulted about the policy of handling freight, that is, the making of rates and the interchange of business with other lines.

Q. But, you say, Mr. Jones, that as far as you know there have not been any rates made?

A. There have been no changes made that I know of.

Q. Do you know of any that have been made as a new proposition since you have been here?

A. I don't remember of any.

Q. You don't remember any?

A. No, sir.

Q. Then if you don't have anything to do with the distribution of cars or the movement of the trains, and as far as you know there have been no rates made and no changes in rates made, you have

been having a very easy time of it here since last September, have you not?

A. No, sir; I have been having a very busy time.

Q. Can you give any other functions given to you to perform except as you have stated?

A. No, sir.

Q. Have you ever had any consultation with the Santa Fe
1030 officials with reference to the movement of any kind of traffic, or the division of traffic?

A. No, sir, not that I know of.

Q. You were never consulted with reference to the amount of traffic your company should receive from the Pacific Mail and other steamship lines?

A. No, sir.

Q. That was not brought to your knowledge?

A. No, sir.

Q. Or as to any efforts you should make to solicit traffic from the Orient?

A. No, sir.

Q. Was the matter of soliciting traffic in the orange country ever brought to your attention?

A. No, sir.

Q. That is all, Mr. Jones.

Commissioner LANE. Any questions, gentlemen?

Mr. LOVETT. We have no questions.

Mr. SEVERANCE. That is all, Mr. Jones.

1031 Mr. SEVERANCE. I next offer in evidence, pursuant to our stipulation, the testimony of J. Ross Clark, a witness before the interstate Commerce Commission, who testified on the 7th day of February, 1907, at the City of Los Angeles, California. I understand that it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Clark were upon the stand giving the same testimony.

Mr. EVARTS. Yes.

J. ROSS CLARK

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Clark, where do you live?

A. In Los Angeles.

Q. How long have you lived in Los Angeles?

A. Since 1892.

Q. What is your business?

A. I am connected with the Salt Lake Railroad—the San Pedro, Los Angeles and Salt Lake Railroad, known as the Salt Lake road.

Q. What is your official connection with that road?

A. I am a Director and Second Vice-President.

Q. Prior to the construction of the Salt Lake Road, Mr. Clark, what was your business?

Q. I was interested in various things in Montana; banking, mining, smelting, etc.

Q. And also locally interested in various matters here in Los Angeles?

A. Yes, sir. In the manufacture of sugar from beets.

Q. You had made your home in Los Angeles prior to that time, from 1892 down?

A. From 1892 down, yes, sir.

1032 Q. And you were interested, I suppose, in development of this section?

A. I have been.

Q. Now, Mr. Clark, what year was the Salt Lake road—we will use that expression as a short expression for the road—what year was that road incorporated?

A. March, 1901.

Q. Prior to that time had you been interested in any railroad in and about Los Angeles?

A. Yes, sir.

Q. What was the name of the road?

A. The Los Angeles Terminal Railway.

Q. And for how many years had you been interested in that property?

A. We became interested in that, I think, in July, 1900.

Q. In 1900?

A. In 1900.

Q. When was that road constructed, Mr. Clark, if you know?

A. The Los Angeles Terminal?

Q. Yes.

A. I don't know.

Q. It had been in existence during the entire period of your residence here?

A. Yes, sir.

Q. Where did it run?

A. From Los Angeles to East San Pedro, and from Los Angeles to Pasadena, and from Los Angeles to Glendale.

Q. Was that a steam road or an electric road?

A. It was a steam road.

Q. Can you tell from your recollection about the mileage of the road?

A. I would say in round numbers about 48 or 50 miles.

Q. The main line of that road ran from Los Angeles to San Pedro, didn't it?

A. Yes, sir.

Q. How many miles is that?

A. 27 miles.

Q. Did that road at the time you became interested in it

1033 have any terminals at San Pedro?

A. Yes, sir.

Q. Can you in a general way give us the extent of those terminals?

A. They had land holdings there amounting to something like twelve or fifteen hundred acres of land on the east side of the inner harbor.

Q. Was the road the owner of a considerable harbor frontage?

A. Yes, sir.

Q. What proportion of the entire frontage on the inner harbor in San Pedro would you say was owned by the San Pedro Company—the Terminal Company?

A. I should think about 50 per cent.

Q. What other corporations, if you know, owned the balance of the harbor frontage there?

A. I do not think that there is any corporation owned anything on the east side; on the west side I understand that the Southern Pacific and different interests, lumber interests——

Q. (Interrupting.) Lumber interests?

A. Lumber interests, yes, sir.

Q. Well, what percentage of the total frontage would you say was owned by the Southern Pacific?

A. I couldn't say.

Q. Do you mean to testify as to the present time or as to the time you acquired the Terminal Company, Mr. Clark?

A. Well, at the time—I don't know that the conditions are very different now.

Q. Judge Kelly suggested that possibly you did not understand which it was I was asking the question about. Could you give me an estimate of about the percentage of frontage owned by the Southern Pacific?

A. I cannot.

Q. You cannot?

A. No, sir.

1034 Q. Who were the other gentlemen, if you know, that became interested in the Terminal Company at the time you became interested?

A. The Terminal Company at that time was owned by St. Louis people. Mr. R. C. Kerens and his associates.

Q. I understand the company was owned by these gentlemen, and did you buy from them an interest?

A. We bought a half interest, yes, sir.

Q. I beg your pardon?

A. We bought one-half interest.

Q. And who were associated with you?

A. My brother and myself, was all.

Q. That is Senator W. A. Clark?

A. W. A. Clark.

Q. Was that after that purchase in May, 1900—did you say it was?

A. About July, 1900.

Q. After that purchase, Senator Clark and yourself, owned one-half interest, and Mr. Kerens and his St. Louis associates the other half.

A. That is correct.

Q. Now, Mr. Clark, what purposes did you have in view in acquiring an interest in this property—was it with the view of extending the line at the time you bought it?

A. Why, I think that was the ultimate—it was the intention to make something more out of it than a local proposition.

Q. Now, Mr. Clark, when did you gentlemen first conceive the idea of the building of the Salt Lake line?

A. It was some time after the purchase of this interest here; I do not remember exactly.

Q. During that year?

A. I do not think it was definitely determined during that year.

Q. Well, was it definitely determined during the next year?

1035 A. Yes, sir.

Q. It was definitely determined before you incorporated the company?

A. Before we incorporated the company, yes, sir.

Q. Now, who were the gentlemen that you associated with yourself in the larger enterprise of building the Salt Lake Road, prior to its incorporation?

A. The same people who owned the other half of the Terminal property.

Q. The same gentlemen?

A. The same gentlemen.

Q. Was not Mr. Kearns of Salt Lake also interested with you?

A. Not at that time. Mr. Kearns came in later, after we had purchased; some time after we had purchased the one-half interest.

Q. But I am speaking about the situation at the time you incorporated the Salt Lake Road; was Mr. Kearns of Salt Lake interested then?

A. I think so.

Q. Then, at the time you incorporated the Salt Lake Company, in 1901, it was in the control of the same gentlemen that had been interested with you in the Terminal Company?

A. Yes, sir.

Q. Namely, the St. Louis people, your brother and yourself, and possibly Mr. Kearns of Salt Lake?

A. Yes, sir.

Q. If he was not in then, he was in very shortly afterwards?

A. That is correct.

Q. After incorporating this company, what steps, if any, did you take toward the construction or the laying out of the line?

A. We very soon after that time started our surveys. About the first thing we did was to re-construct the line between here and San Pedro; widen the banks, put on heavy rail and ballast that, and

we commenced the construction of the line from here to
1036 Riverside.

Q. Now, you speak of putting surveyors in the field; over what part of the line did you put surveyors in the field?

A. Our first surveying started from here, about three miles below town, Hobart Junction, to the east, and sometime soon after that we had surveyors in the field in Utah.

Q. Did they work from Salt Lake west?

A. From Salt Lake west.

Q. Did those surveyors complete their work to the extent of—at least in a tentative way—of establishing a through line from here to Salt Lake?

A. I do not think the line at that time was completed clear through. We commenced surveying, if I remember correctly, at Salt Lake, and ran a line out to Lynn Junction—what is known as——

Q. (Interrupting.) How far is that from Salt Lake?

A. About 116 miles.

Q. In this direction?

A. In this direction, west.

Q. Well, then, where did they go next?

A. I think they were transferred some time after that—skipped quite a piece of territory and were transferred down to what is known as the Meadow Valley Wash.

Q. What is this Meadow Valley Wash?

A. It is a canyon; it is in the State of Nevada.

Q. Well, did your surveyors survey a line through that canyon?

A. They did.

Q. What happened then when the surveyors got down to the Meadow Valley Wash?

A. We had considerable trouble there with our opponents.

Q. Who were your opponents?

A. The Oregon Short Line.

1037 Q. What was the nature of the trouble that you had with your opponent, the Oregon Short Line, in the Meadow Valley Wash?

A. The first trouble was, there was an old grade built from Uvada to Caliente, and a partial grade built from Caliente——

Q. (Interrupting.) I cannot hear you.

A. There was constructed a grade at that time that had never been used from Uvada—that is the Utah State line to Caliente.

Q. How far is that?

A. About 42 miles.

Q. Did that run through this canyon?

A. Through part of it; not altogether. Then there was a partially constructed grade from Caliente to Pioche, which had been built a good many years prior.

Q. Can you tell about how long prior those two grades had been made?

A. I am informed they were built in 1889 or 1890.

Q. Some eleven or twelve years before?

A. Prior.

Q. Did they connect up with any line of railroad at any point?

A. Yes; they connected with the Utah and Pacific at Uvada. That Utah and Pacific was constructed from Milford to the Utah State line.

Q. But nothing had been done with these from the time they were partially constructed in 1889 and 1890 down to the time you appeared on the scene?

A. Nothing.

Q. You say that you had trouble in the Meadow Valley Wash with your opponent, the Oregon Short Line. I wish you would state pretty fully just the nature of that trouble.

A. Well, these grades had been lying there for a great many years; had not been occupied; had been sold for taxes, and we presumed they had been abandoned, and we undertook to take possession of
1038 them; bought up the tax title in one case, and finally the matter got into court. The court ruled against us, and we abandoned that part.

Q. Then what did you do?

A. Well, we proceeded then to survey from Caliente west, down through the continuation of the Meadow Valley Wash, which is rather a rough canyon, most of it, and there we got into trouble again.

Q. What was the trouble that time?

A. It was a question of survey and getting our maps approved.

Q. Well, with whom did you have that trouble?

A. With the Oregon Short Line.

Q. The same old friends that you had trouble with before?

A. I am not sure it was the Oregon Short Line Company; it may have been another company; I think they were probably working there under the Utah, Nevada and California Company.

Q. Was it a sub-company of the Oregon Short Line?

A. I understood so.

Q. What was the nature of the trouble you had with them?

A. It was merely in getting our maps approved.

Q. Where?

A. In the United States Land Office.

Q. How did you come out with that?

A. Not very successful.

Q. Was the matter finally determined, or was it in litigation?

A. It got into court, and never was finally determined.

Q. Yes, that is what I meant. It got into court, and litigation was pending concerning it.

A. Litigation was pending.

Q. Now, Mr. Clark, at the time you started these surveys and did this work that you have spoken of, what was the intention of your-

self and your associates as to building an independent line from Los Angeles and San Pedro through to Salt Lake City?

A. I do not know exactly what you mean by "an independ-
1039 ent line," but so far as I know it was the plan of our people to build a line.

Q. Build a line of their own?

A. Yes, sir.

Q. To be controlled by themselves?

A. Yes, sir.

Q. How long a time was consumed in this litigation, through the various parts of the litigation you have mentioned?

A. I cannot say definitely, but a good many months.

Q. During the time that you were conducting this litigation, were you continuing your work of surveying in other places?

A. I am not positive about that; I am not sure.

Q. At the time that you put your surveying crews into this canyon, was there any other surveying crew put in there?

A. Yes, sir.

Q. Or shortly afterwards?

A. I think they were probably in there before that.

Q. In there before you were?

A. Yes, sir.

Q. But they were put in there after you had surveyed out from Salt Lake?

A. Yes, sir.

Q. Did these surveying crews have any trouble with each other?

A. I don't remember if they did.

Q. You don't remember about that?

A. No, sir.

Commissioner LANE. Was this canyon the only practicable route?

WITNESS. Coming from Salt Lake to Los Angeles, I would say it was.

Commissioner LANE. You regarded it as necessary that you should have the use of that canyon?

WITNESS. Absolutely; yes, sir.

Q. That is, some part of it?

1040 A. At some points. It was the controlling points of the route from Salt Lake to the west.

Commissioner LANE. If the Oregon Short Line had been able to control that canyon, could you have built your line through?

WITNESS. I don't think it would ever have been built.

Commissioner LANE. Do you know who instituted the litigation against you primarily?

WITNESS. It was done, I think, in the name of the Utah, Nevada and California Railroad Company.

Commissioner LANE. What kind of a corporation was that?

WITNESS. It was incorporated for the purpose of constructing railroads.

Commissioner LANE. Did you have any interest in it?

WITNESS. None whatever.

Commissioner LANE. Who did? Who controlled it?

WITNESS. So far as I know, the Oregon Short Line.

Commissioner LANE. They claimed that they had an exclusive right to the use of that canyon?

WITNESS. I don't know that they made that claim, but they were on the ground first, evidently; made their surveys; filed their maps, before we did.

Commissioner LANE. Then you recognized that they had some rights there?

WITNESS. Yes, sir.

Q. When did these surveying crews of the Oregon Short Line come in there, with reference to the time that your crews arrived?

A. Not a great while prior to ours, I don't think.

Q. Well, was it a matter of weeks?

A. Well, I would say probably two or three weeks; ten days to two weeks. I am not positive about that.

1041 Q. Now, Mr. Clark, had the fact that you were surveying this line and intended to build this road through from Los Angeles to Salt Lake been a matter of public notoriety for some months before that?

A. I think so.

Q. It had been publicly stated here, and through the press generally, that you were about to construct this line?

A. I think the papers both here and in Salt Lake had something to say about it.

Q. Now it appears by the evidence already taken in this case that certain contracts were entered into between—in the first instance, between William A. Clark, designated as Clark, Trustee, for his own account and upon the account of his associates on the one hand, and E. H. Harriman, designated as Harriman, Trustee, as trustee for the Oregon Short Line Railroad Company. The first contract being dated on the 9th of July, 1902. You are familiar with that contract.

A. I know something of it; yes, sir.

Q. You were one of the associates for whom Senator Clark acted in making that contract?

A. Yes, sir.

Q. How long prior to the making of that contract did negotiations commence that resulted in that contract?

A. I can not tell that.

Q. Well, was it several months or a few weeks, or a day, or two days?

A. I think it was at least six or eight months; six months at least prior to that.

Q. Who initiated those negotiations?

A. I cannot tell that.

Q. You do not know whether it was Mr. Harriman or your brother?

A. I do not.

Q. From time to time during that period were the various
1042 matters that were finally embodied in the contract a matter of discussion between your brother and his associates?

A. I think so.

Q. Including yourself?

A. Yes, sir.

Q. Up to the time that you had this litigation and up to the time that these negotiations were commenced, Mr. Harriman or his companies had no interest whatever in the Salt Lake road, did they?

A. None whatever.

Q. At the time of the making of this contract of the 9th of July, 1902, had you built some of the road?

A. We had.

Q. How much?

A. I think the line was pretty well completed between here and Riverside; it must have been just about completed.

Q. Had you made a survey from Riverside on, this end?

A. Yes. We made a survey from Cajon Pass, and I think at the time that contract was gotten up our surveyors were out on the desert.

Q. That is, you had surveyed on up from Riverside, through San Bernardino, and through the Cajon Pass at that time?

A. Yes, sir.

Q. And you had made that survey for the purpose of establishing your line of road there?

A. That was the ultimate end.

Q. I see by this contract between your brother as trustee, and Mr. Harriman as trustee, that at the time your brother and his associates were the owners of approximately seventy per cent of the capital stock of the California Improvement Company and of the capital stock of the Empire Construction Company. What was the California Improvement Company?

1043 A. The California Improvement Company was, I think, an Illinois corporation, incorporated under the laws of the State of Illinois, and it was, so far as I know, a holding company. It was controlled by the St. Louis people.

Q. And what did it hold?

A. It held the interest of the Los Angeles Terminal Railway Company.

Q. Then the California Improvement Company was nominally the stockholder of the Terminal Company?

A. That is correct.

Q. And you gentlemen who bought into the Terminal Company, as you say, were owners of the stock of the California Improvement Company?

A. We bought the California Improvement Company shares.

Q. Who owned the other thirty per cent of that stock?

A. That was scattered between—held by different people in St. Louis and that vicinity.

Q. It was not held by anybody affiliated with the Oregon Short Line or any of those people?

A. No, sir.

Q. Then it further appears in this contract—it is recited that Senator Clark and his associates were the owners of approximately seventy per cent of the capital stock of the Empire Construction Company. What was that company?

A. That was a Utah corporation, organized by my brother and his associates. The same people that were interested in the California Improvement Company were stockholders—practically the same people, perhaps with few exceptions—in the Empire Construction Company.

Q. And was that company the owner of the stock of the Salt Lake road?

A. No, sir.

Q. What did it own?

1044 A. It didn't own anything except it had a paid-up capital at one time.

Q. What was it incorporated for?

A. The object was, I think, at that time, to use it so that the construction work should probably be done through that company.

Q. It was the company that was to take the contract to build the road, and through which the securities were to be put up?

A. That was the idea.

Q. Who owned the balance of the stock in that company?

A. That was held by different people in St. Louis.

Q. That stock was distributed in the same way as the stock of the California Improvement Company?

A. Practically the same way.

Q. What was the Los Angeles Terminal Land Company?

A. That was—I am not sure whether it was a California corporation or not.

Q. I know, but what did it own?

A. It held landed interests.

Q. Whereabouts, in the city?

A. It had some pieces inside the city limits, but the large holdings were at East San Pedro.

Q. And that was the company then that owned the lands which you intended to use as the terminals for the Salt Lake road?

A. Yes, sir. That stock was held, also, by the California Improvement Company.

Q. Yes, so it is recited in the contract here. It is also recited in this contract that there are now in the treasury of the California Company 25,000 shares of the capital stock of the San Pedro Company—meaning by that, I think, the railroad. Yes, that is right. Aggregating $2,500,000, which stock was issued and held by William

1045 A. Clark, and R. C. Kerens, and it is for the stockholders of the California Company. Was that all the stock of the San Pedro Company then issued?

A. That was all the stock.
Q. How is that?
A. 25,000 shares?
Q. Yes.
A. That was all the stock.
Q. That was all the stock?
A. Yes, sir.
Q. Now, after the Los Angeles Terminal Company had acquired these terminals in Los Angeles and San Pedro, what did it do with them?
A. The Los Angeles Terminal Company?
Q. Yes; those lands were conveyed, were they not, to the Salt Lake road?
A. All the holdings of the Los Angeles Terminal Railroad Company and the Los Angeles Terminal Land Company were transferred to the Salt Lake Route.
Q. Now, at the time you projected this Salt Lake Road, you intended its eastern terminus to be at Salt Lake City, did you not?
A. Salt Lake City, yes, sir.
Q. With what roads did you expect to interchange freight at that place?
A. Both the Oregon Short Line and Denver & Rio Grande.
Q. They both reach——
A. (Interrupting.) They both reach Salt Lake.
Q. You say that you do not know who initiated those negotiations that eventuated in this contract? Where were these negotiations carried on?
A. Why, partly in California and partly in New York.
Q. Who represented Mr. Harriman in the negotiations when they were carried on in California?
A. Mr. Stubbs, I think, is the only man that I ever talked to about them in California.
Q. Mr. J. C. Stubbs?
1046 A. Mr. J. C. Stubbs.
Q. The gentleman sitting here in the room [indicating]?
A. Yes, sir.
Q. And who represented the other interests when the negotiations were carried on in the East—Mr. Harriman personally?
A. Judge Cornish, I think, largely.
Q. And Judge Cornish is the Vice-President of the various Harriman lines, is he not?
A. I understand so.
Q. Did you ever have a meeting with Mr. Harriman in the course of these negotiations yourself?
A. Yes, sir.
Q. This contract, or the arrangement between you finally resulted in Mr. Harriman acquiring one-half of the stock of the Salt Lake road, didn't it?
A. Yes, sir.

Q. Now, in this contract I find this, in Section 6 of Article I: It is the contract of July 9th, 1902, which is introduced in evidence in New York, and is marked "Exhibit No. 53, Alexander Millar." Section 6 reads as follows: "Upon the completion of the sale and purchase of the said undivided one-half of the capital stock of said companies, now owned by said Clark, trustee, will, whenever requested by said Harriman, trustee, cause one-half the membership of the directorate of each of the several companies to be vacated, and will cause directors to be nominated and named by the said Harriman, trustee, to be elected to the directorate to fill such vacancies in each and every of said companies, but said Harriman, trustee, appreciating the advantage to be obtained by preserving the independent character of the San Pedro Company, and to that end disturbing as little as may be the present organization of said company until the through line of said San Pedro Company in this agreement mentioned is com-
1047 pleted and in operation, will not exercise the right herein given him to name one-half of the said boards of directors unless he shall deem the exercise of such right necessary to the protection of the interests which he represents."

At whose suggestion was that provision put into the contract?

A. I do not remember.

Q. Well what action did Mr. Harriman take under that? Did he continue to appreciate the advantage of preserving the independent character of the San Pedro Company and to that end refrain from disturbing the organization until he had the line built, or did you vacate part of the members of the directorate and put in Harriman men?

A. I do not remember the date that the Board was divided. It was some time—I am not sure whether it was before the completion of the line or afterwards.

Q. What reason was advanced for that provision?

A. I do not know.

Q. You don't know about that?

A. No, sir.

Q. Mr. Harriman personally never told you why he thought it would be an advantage to allow the independence of the San Pedro line to remain undisturbed on the surface?

A. He did not.

Q. Did any representative of his tell you that?

A. Not that I remember.

Q. How is that?

A. Not that I remember.

Q. Did any of your associates report at a meeting why Mr. Harriman wanted that provision in the contract?

A. They did not.

Q. Do you know who drew this contract?

A. I do not know. There are several people who had a hand in it—Judge Cornish, and I think Judge Kelly had something to do with it, Mr. Gibbon, Mr. Stubbs and myself.

1048 Q. Well, Mr. Kelly at that time was counsel for the Union Pacific, was he not?

A. He was.

Q. And he was consulted with reference to this matter, was he?

A. Yes, sir.

Q. Here in Los Angeles?

A. No.

Q. In the East?

A. Yes, in the East.

Q. Mr. Gibbon was your counsel?

A. Mr. Gibbon was our counsel.

Q. Now, you have stated that you completed surveys out through the Cajon Pass and into the desert; you had done so at the time this arrangement was made?

A. Yes, sir.

Q. What caused the abandonment of the line beyond Riverside? That is, what caused you to abandon the scheme of constructing a separate line of road beyond Riverside?

A. Constructing a line of road over the mountains?

Q. Yes; you use certain Santa Fe track and certain Southern Pacific track?

A. Yes, sir.

Q. You use Southern Pacific as far as——

A. (Interrupting.) From Riverside junction to Colton, and the Santa Fe track from Colton to Daggett.

Q. Didn't you build a little line in between there?

A. No, sir.

Q. What was the occasion for abandoning the construction of your line?

A. I think a matter of economy. In the first place, it is a very heavy construction, would be very heavy over the Cajon Pass; it would take a good deal of time to do it, cost a great deal of money, and we were anxious to get the line open as soon as possible; and we made trackage arrangements with the Santa Fe Company.

1049 Q. There was no physical difficulty about constructing a line from Riverside to Colton, was there?

A. No, sir.

Q. Why was that abandoned?

A. Well, I presume it was a matter of economy.

Q. A matter of economy?

A. A line from Riverside to Colton can be built, but it is a very expensive country to run through; you run through orange orchards and——

Q. (Interrupting.) At whose suggestion was that construction abandoned?

A. I do not remember.

Q. Do you remember at whose suggestion the construction of the line through the Cajon Pass was abandoned?

A. No, I do not.

Q. Mr. Clark, did the Oregon Short Line have any contract, so far as you know, with the Santa Fe before you abandoned your line, by which the Short Line was given the right to use the Santa Fe tracks from Colton through, over the Cajon Pass?

A. Not to my knowledge.

Q. You never knew anything about that?

A. No, sir.

Q. I notice in this contract of July 9th, Article 3 of which reads as follows: "Section 1. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern Pacific Company and if possible obtain from said Company the right for the San Pedro Company to use the tracks of the Southern Pacific Company from the point of its junction with the tracks of the Southern California Company at or near Colton, to the point of junction with the tracks of the San Pedro Company at or near Riverside."

Did Mr. Harriman conduct those negotiations with the Southern Pacific?

1050 A. I think he had something to do with them.

Q. Was he President of the Southern Pacific at that time?

A. I think so.

Q. So that he covenanted here that he would negotiate with himself and secure that track, if possible, and he was successful?

A. Yes, sir.

Q. Judge Kelly corrects me. He says he was chairman of the executive committee.

Mr. KELLY. I want to correct Mr. Clark. Mr. Harriman was not the president of the company at that time; he was chairman of the executive committee. Mr. Hayes was president of the company at that time.

Q. By Section 2, Mr. Harriman also agrees to "negotiate with the Southern California Railroad Company and, if possible, obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton, to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow." That is, it is a subcompany of the Santa Fe?

A. Yes, sir.

Q. Did Mr. Harriman conduct those negotiations?

A. I don't think so.

Q. You don't think so?

A. No, sir.

Q. Who did?

A. They were taken up by my brother with Mr. Ripley; Mr. A. G. Wells had something to do with it, and myself.

Q. And the negotiations were carried through between yourself and your brother and Mr. Ripley?

A. Yes, sir. I do not think Mr. Harriman ever had anything to do with that.

Q. He had nothing to do with that?

A. Not so far as I know.

1051 Q. Did you carry out the rental that is specified here, which is "a rental not exceeding four per cent per annum on one-half the valuation of the property of the Southern California Company so used, and a share of the costs of maintenance thereof, including the taxes in proportion to the use of said tracks and property on a wheelage basis"?

A. The interest rate there is not correct; we are paying more interest; I think we are paying four and one-half per cent.

Q. Aside from that?

A. Aside from that, it is practically that.

Q. Do you pay your share of the cost of maintenance?

A. On a wheelage basis.

Q. And you pay a rental of four and one-half per cent on the cost——

A. (Interrupting.) Four and a half per cent on the value of the road, as agreed upon.

Q. And you have also a similar arrangement, have you not, with the Santa Fe Pacific Company between Barstow and——

A. (Interrupting.) Barstow and Daggett; and I think those companies probably were turned over to the Santa Fe, and I believe are controlled simply by one company.

Q. I think that is true. Here is a provision, sub-division D of Article 4 of this contract, that I would like to ask you about, Mr. Clark. This article here is the one wherein it is provided that the San Pedro Company and the Short Line Company shall enter into an agreement for a term of ninety-nine years, which agreement was afterwards made; and subdivision D of that article of this contract reads as follows: "Said agreement shall further provide that should conditions develop hereafter"—this, referring to the agree-

1052 ment made between the Short Line and San Pedro Company—"which require the construction of branch lines connecting with the said San Pedro Company's road south of Salt Lake City, the construction of such lines shall be subject to agreement before the commencement thereof; providing, however, that if either party objects to the construction the other may build said branches and connect the same with the main line of said San Pedro Company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not directly or indirectly invade the territory of the Short Line Company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line Company's road north of Salt Lake City."

Now, at whose instance was that provision put into the contract, that the San Pedro Company should not at any time build branch lines which would invade what is called the territory of the Short Line?

A. I do not remember now. It is a good while ago since those contracts were worked out.

Q. Do you remember whether Mr. Harriman suggested that provision?

A. No, I do not. I should judge from the provision that it must have come from their people.

Q. From their people, yes.

Commissioner LANE. Were you consulted about that contract?

WITNESS. I beg pardon?

Commissioner LANE. Were you consulted about that contract by anyone before it was entered into.

WITNESS. Yes, I had something to do with it.

1053 Commissioner LANE. With whom did you talk about it?

WITNESS. Most of my talk was with Mr. Stubbs and Judge Cornish, I think, more than with anybody else; Mr. Gibbon and myself talked with Judge Cornish and Mr. Stubbs. Judge Kelley, I think, had something to do with it, but I do not remember how much. He was stationed at Omaha and I think was in New York once or twice—I am not sure—pending the working out of this agreement.

Commissioner LANE. Did you talk with Mr. Harriman about it yourself?

WITNESS. I think so.

Commissioner LANE. You did? You talked with your brother, the Senator, about it, did you?

WITNESS. Yes, sir.

Commissioner LANE. Upon whose representation was it that you agreed to the making of that contract?

WITNESS. I don't know as I exactly understand your question, Mr. Lane.

Commissioner LANE. Who was it induced you to consent to the making of that contract? You were interested with your brother in it?

WITNESS. Yes, sir.

Commissioner LANE. And you were consulted about it?

WITNESS. Yes, sir.

Commissioner LANE. You were familiar with its provisions before it was entered into?

WITNESS. Yes, sir.

1054 Commissioner LANE. Was your interest as considerable as your brother's in the matter?

WITNESS. No, sir, it was smaller.

Commissioner LANE. Was his interest controlling?

WITNESS. Yes, sir.

Commissioner LANE. Did he ask your consent to the making of that contract?

WITNESS. He did.

Commissioner LANE. Was his judgment accepted by you as final on the matter, or did he ask your consent specifically?

WITNESS. I think it was mutual.

Commissioner LANE. It was mutual?

WITNESS. Yes, sir.

Commissioner LANE. The representations that were made to you, you regarded as sufficient, and you acted on your own judgment in the making of the contract?

WITNESS. I did.

Q. Now, then, the section proceeds: "On the other hand, it is agreed and understood that the Short Line shall not build branch lines which will invade the territory of the San Pedro Company south of Salt Lake City or divert business which would be naturally tributary to the San Pedro Company's road south of Salt Lake City." Do you recall at whose instance that provision was put in the contract?

A. No, sir, I do not. I should judge it came from some of our people.

Q. Your people?

A. Yes, sir.

Q. That is, your purpose was then to draw a line on the part of Salt Lake City?

A. Yes, sir.

Q. You were expected to stay on one side of the fence and
1055 the Short Line on the other side, and neither was to come on the other side for ninety-nine years?

A. If they prevented our interests from going in one direction, we certainly wanted to protect our interests in the other.

Q. Now, I will call your attention to Section 5 of this contract which reads as follows: "Said agreement shall also contain the following provision: 'It is agreed that the interchange of traffic by and between the San Pedro road on the one hand and the Short Line Company and the Union Pacific on the other hand, as against any competitor of said Short Line Company or said Union Pacific Company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific Company; and, in like manner, that the interchange of traffic by and between said Short Line Company and said Union Pacific Company on the other hand, and the San Pedro Company on the other hand as against any competitor of the said San Pedro Company shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro Company.'" Now, there is a provision later on which I will call your attention to in that connection, being section 7, two sections after this, which reads as follows: "Said agreement shall also contain the following provision: 'Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line Company in respect to interchange of traffic each with the other.'" At whose instance

were those provisions put in, that you should deal preferentially with the Union Pacific as against competitors, and that they should deal preferentially with you, as against competitors, except that "Nothing contained herein shall be construed as limiting the
1056 rights or privileges of the Union Pacific Railroad Company" in its dealings with the Southern Pacific Company or the Short Line Company?

A. I do not remember now.

Q. Do you remember who suggested those provisions?

A. I do not.

Q. You understood those provisions at the time, Mr. Clark?

A. I think so.

Q. Did you realize the position that that left the railroad in, fully?

A. I do not know that I did.

Q. As regards dealing with other Trans-continental lines like the Rio Grande?

A. That section says it was preferential but not exclusive.

Commissioner LANE. Did your brother urge you to consent to that?

WITNESS. I do not think so.

Commissioner LANE. Do you know whether Mr. Stubbs or any one else acting for the Union Pacific did?

WITNESS. I do not remember of any urging on either side.

Commissioner LANE. With whom did you consider that paragraph?

WITNESS. Well, I do not remember now. It was Judge Cornish or Mr. Stubbs. I don't remember.

Q. Pursuant to this contract, your road afterwards made some trackage agreements, did it not; made some formal traffic agreements, written contracts?

A. Yes, I think so.

Q. I will come to those in a minute. I will now call your attention to Section 12 of this contract, Mr. Clark, which reads as follows: "Said agreement shall also contain the following provision: 'Said San Pedro Company hereby covenants and agrees
1057 that it will not now nor hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City, or in Nevada, upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the interchange of the same or similar traffic with the Short Line Company at Salt Lake City.'" At whose instance was that provision put in the contract?

A. I do not remember.

Q. It was not yours, was it?

A. Probably not; I can not say, however.

Q. Did you understand at the time what that provision meant?

A. Yes, sir.

Q. It disabled you from dealing with any other competitor of the Short Line or the Union Pacific on better terms than you had with those roads?

A. It did not prevent us from dealing with anybody else; it prevented us from dealing with anybody else on better terms than we would grant them.

Q. That is it exactly. And that was to last ninty-nine years?

A. I do not remember the date without referring to the contract.

Q. Turning to "Exhibit No. 42, Alexander Millar," which is a traffic agreement between the Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad Company, made pursuant to this contract——

Commissioner LANE (interrupting). What is the date of that?

Mr. SEVERANCE. That is dated June 18, 1903.

Q. I want to ask you some questions about that. In the 1058 first place, there were introduced in evidence in New York that agreement, also the traffic agreement with the Oregon Short Line, the San Pedro line and the Union Pacific Line, and the deeds of certain railroad properties, and the agreement between your brother as trustee and Mr. Harriman as trustee by which the stock of the San Pedro road was trusteed to the Farmers Loan and Trust Company, the last mentioned contract being dated the 7th of June, 1903, and the balance of them all on the 18th of June, 1903. That was nearly a year after this preliminary contract?

A. Yes, sir.

Q. At the time these last contracts were made, had you completed your line?

A. June, 1903.

Q. Yes.

A. No, sir.

Q. Well, any part of it?

A. Yes, part of it.

Q. Which part?

A. The line was completed from here to Riverside and we were working beyond Daggett, and we were working from Caliente west at that time.

Q. At Caliente you connected up with the lines of the Utah Short Line that you had acquired under your joint deal?

A. Yes, sir. The old line was constructed down to that point.

Q. You are familiar with these various contracts, the subsequent contracts, the permanent contracts?

A. Yes, sir.

Q. They were submitted to you, and your Board of Directors, and approved by you?

A. I had something to do with them, and I think, as far as I remember, they were approved by the Board of Directors or the executive committee—the Board of Directors, I think.

Q. You were familiar with them and consulted while they
1059 were in preparation?

A. I was.

Q. Who drew these contracts, these subsequent contracts, the traffic agreements, deeds, trustee agreements, and all that?

A. Mr. Gibbon and Judge Cornish, and I think, Judge Kelly was in New York at that time.

Q. These contracts were prepared, were they not, and these deeds, and so on, in furtherance, to a great extent, as you understand it, of the original contract?

A. This tentative agreement?

Q. Yes.

A. Yes, sir.

Q. Now, this "Exhibit No. 42, Alexander Millar," is a traffic contract between the Southern Pacific and the San Pedro, Los Angeles, and Salt Lake Railroad Company, that seems to have been signed by the Southern Pacific, E. H. Harriman, President, and the San Pedro, by W. A. Clark, President. Articles 2 and 3—well, in the first place, article 1 of this contract provides that the Southern Pacific Company will interchange freight traffic in the State of California with your company on as favorable terms as with the Southern California Company. Article 2 reads as follows:

"In partial consideration of the said covenants and agreements of the said Southern Company, contained in Article 1 hereof, said San Pedro company hereby covenants and agrees with said Southern Company"—that is, the Southern Pacific—"that it will, upon the execution of this agreement, adopt, print, publish and put in force at all points on its leased, owned, or operated railroad, for the handling of local business thereon, the lawful freight rates, tariffs,
1060 classifications and charges used by said Southern Company for the handling of any local business which may be the subject of competition between them."

Article 3 reads as follows: "Each party hereto"—that is, the Southern Pacific and your company—"mutually covenants and agrees to and with the other that after the adoption and putting in force of rates as provided by article 2, neither of them shall or will change any such rates without the consent of the other party hereto, unless such change may be made necessary in order to meet the rates, charges, classifications or tariffs, of any other company or competing line of railroad, or to conform to the final decree or judgment of some court of competent jurisdiction, or some lawful and valid requirement of state or national law."

Do you remember those provisions?

A. Yes, sir.

Q. You understood what that meant when you agreed to it, did you?

A. Well, I take it for granted that I did.

Q. And that that agreement, according to article 5, "is binding upon each of the parties hereto for the term of ninety-nine years?"

You understood then that for ninety-nine years, upon the class of traffic mentioned there, you could not make a change of rate without the consent of the Southern Pacific, did you?

A. I presume that is correct.

Q. At whose instance was that put in?

A. I cannot tell now; evidently it was not at our instance.

Q. How is that?

A. I say evidently it was not at our instance.

Q. At your own suggestion?

A. I say evidently it was not.

Commissioner LANE. Why did you consent to the making of
1061 a contract with that provision in?

WITNESS. Why, that let us into Southern California. There is a provision in there that they shall interchange business with us on the same terms as they interchange with the Santa Fe Company. Now, at that time, we had probably a little over one hundred miles of railroad in Southern California, and that would give us access, by interchange, to three hundred additional miles already constructed by the Southern Pacific in operation.

Commissioner LANE. You say that lets you into Southern California. Could you not have gotten in without that?

A. In time, yes, sir, at enormous expense. Those lines were already constructed and in operation.

Q. What lines do you mean were already constructed and in operation?

A. The Southern Pacific line.

Q. Had those been constructed for many years?

A. Yes, sir.

Q. But this contract you made was to run ninety-nine years?

Mr. KELLY. Pardon me. To what sort or class of traffic do you understand, or did you understand that contract to apply, and to what class of traffic has it been applied?

WITNESS. Only to local traffic.

Q. What do you mean by "local traffic?"

A. Traffic that would be picked up at a Southern California point and laid down in the State of California.

1062 Q. I noticed an interview of my friend, Mr. Dunne, in which he stated that yesterday——

Mr. DUNNE. I thought you brought that out at New York yourself.

Mr. SEVERANCE. No, I did not.

Mr. DUNNE. Well, your partner did.

Mr. SEVERANCE. No. Let us see what local traffic means.

Q. Have you ever heard, Mr. Clark, of the term "local traffic" being deemed to apply to traffic local to a line of road, as distinguished from local to a state? For instance, suppose your line ran from Los Angeles over to some point across the line in Arizona, would not the term "local traffic" be properly applied to any traffic local to your line without reference to state lines?

A. That would be an interstate proposition.

Q. I understand, but would not the term "local" as used in railroad parlance be properly applied to business that is local to your line—that is true, isn't it?

A. That is a pretty hard question for me to answer.

Q. You answered Judge Kelly that it was intended to apply to business that was picked up and laid down in California?

A. Yes, sir.

Q. If that is the case, will you explain to me what this pro-
1063 vision means in Article 3? After you have agreed that you will maintain these rates, the Southern Pacific rates, and will not change these rates without the consent of the other party, there is a provision at the end which reads as follows: "Unless such change may be made necessary in order to meet the rates, charges, classifications or tariffs of any other company or competing line of railroad or to conform to the final decree or judgment of some court of competent jurisdiction, or some lawful and valid requirement of state or national law." Will you explain to me what change could be prevented or required by any national law applying only to commodities transported within the State of California?

A. No, I do not know that I can.

Q. Does not that show clearly that it was never the intention that this should apply to traffic local to the State of California, from the fact that in the proviso you expressly reserve the right to change, if it was required by any valid requirement of state or national law?

Mr. KELLY. That is argumentative.

Mr. SEVERANCE. Yes, I know.

Commissioner LANE. I think we are entitled to his opinion about that.

Mr. SEVERANCE. You have asked his opinion about that.

Mr. KELLY. Oh, no, I did not ask his opinion.

Commissioner LANE. What was your understanding of the meaning of that provision?

WITNESS. My understanding of that provision at the time was that it only applied to local business.

Commissioner LANE. I mean with reference to this last question, as to governmental or national regulation?

WITNESS. I would not undertake to answer that.

1064 Commissioner LANE. Mr. Clark, who were the parties to that agreement?

WITNESS. The Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad Company.

Commissioner LANE. Now, then, isn't it within the power of those two parties, the Southern Pacific Company and the San Pedro Company, to give any construction that they please to the word "local" there?

WITNESS. No, I do not think so. I think the word "local" business would apply—as I understand, it would be state business; busi-

ness picked up in California, at some point in the state, and laid down at another.

Commissioner LANE. Suppose that the Southern Pacific Company and your company owning half each determined that the line from Los Angeles or from San Pedro to Salt Lake City, as a whole, was to be governed by that provision, and give their own interpretation to the word "local?"

WITNESS. My understanding of that contract is that it never was the intention.

Commissioner LANE. But it would be within your power, you think, to give that construction?

WITNESS. I would not want to say that it would.

Commissioner LANE. Proceed, Mr. Severance.

Q. Well, are you able to give any reason for the insertion of that proviso with reference to regulation by national law, if this contract is applicable only to California state business?

A. No, I am not able to.

Q. By whom was that clause drawn, if you remember?

A. I do not remember.

1065 Q. It was drawn by your counsel; by some of the counsel in the case?

A. It certainly was, yes, sir.

Q. Either by Judge Kelly, Mr. Gibbon, or Judge Cornish, was it not?

A. Yes; I think these were the only gentlemen that had anything to do with the matter.

Q. All eminent railroad lawyers, familiar with the use of the terms, and also eminent constitutional lawyers, familiar with the limitations of the Federal Constitution. Those gentlemen drew that contract, and probably did not put in any words that properly did not mean anything—you didn't suppose they did at the time?

A. No.

Q. You looked upon that as the best expression of the agreement of the parties, didn't you?

A. I presume we took it so at that time.

Commissioner LANE. Then, as I understand your testimony, that provision was not executed at the direction of yourself or your brother and his associates; it came from the other side?

WITNESS. I did not say that. I do not remember.

Commissioner LANE. Well, I misunderstood the answer that you made at the beginning of this examination by Mr. Severance upon this question. I thought you said evidently it did not come from our side.

WITNESS. Did that refer——

Q. (Interrupting.) Well, I thought you so testified. If that is not correct, you are quite at liberty to change your answer.

A. Well, I am willing to say that I do not think that a clause of that kind would come from our associates.

Q. From your associates?

A. Yes, sir.

1066 Q. But that it came from what you have been referring to all the time as "the other people?"

A. From the other people.

Q. Mr. Harriman and his friends—the Southern Pacific people?

A. I say I do not remember, but it is not likely that it originated with our people.

Q. Now, at the time that this contract was approved in June, 1903—June 18, 1903, is the date there. At that time do you recall, sir, who the directors of your company were?

A. In 1903?

Q. Yes.

A. I can name some of them. I do not think I can name all of them without the list.

Q. Had there been a division of the directors at that time between the Harriman people, so-called and your people?

A. There had not.

Q. There had not?

A. No, sir.

Q. But this contract of July, 1902, had been in force for about a year, hadn't it?

A. Had been in force for about a year.

Q. And Mr. Harriman had not seen fit to demand the division of the directors?

A. He had no right to under that.

Q. I think there is a provision that I called your attention to, which stated that he did have a right.

A. No such things were done, I think.

Q. No, he was given the right to do it for the protection of his interests?

A. Yes, after the original contract was worked out and signed.

Q. That is what I am speaking of. The original contract is dated July 9, 1902. This traffic agreement is a year later?

A. Yes, sir.

Q. Now, what I want to know, if you remember—of course, the books will be the best evidence—is whether Mr. Harriman up

1067 to that time had taken advantage of his right to disturb, as he called it, the independent character of the San Pedro Company or its organization by putting in half the board of directors?

A. There had been no change in the board of directors until some time after the subsequent contract was signed.

Q. But you knew at that time, of course, that Mr. Harriman had the right at any time to make that change?

A. Yes, sir.

Q. Your rights were all fixed and determined by this contract, made the year before, which was being carried out by the making of these new contracts between the companies?

A. Mr. Harriman never exercised any rights under that contract that the subsequent contracts would give him.

Q. That is, he never put in half the board?

A. No, sir.

Q. Now, at the same time that you made this contract, you entered into a contract which is marked "Exhibit 41, Alexander Millar" of this record, between the Oregon Short Line Railroad Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, and the Union Pacific Railroad Company. You remember that, do you not?

A. I do.

Q. Article 1, section 1, of this contract provided that, "the terms and conditions of this agreement shall exist and be binding upon each of the parties hereto for the term of ninety-nine years from the date of the execution thereof." You understood that at the time, didn't you, Mr. Clark?

A. Yes, sir.

Q. This contract, by article 1, recites the lines of road owned, operated, or controlled by your company, the San Pedro Company, and also the lines of road controlled by the Short Line. That has all been expressed, I think, in the preamble here. And then the
1068 line of railroad of the Union Pacific is described as running from Ogden, Utah, to Council Bluffs, together with branch lines.

Article 2, section 1, of this contract, reads as follows: "Said San Pedro Company hereby covenants and agrees to and with said Short Line Company that it will not hereafter, during the term of this agreement, extend its said main line of railroad, or any of its branch lines of railroad, nor construct or build any lines of railroad, or aid any other company or companies in the construction or building of any line of railroad, nor assist or advise in the building or construction of any other railroad than the said lines of railroad in Article 1 hereof described, northward from Salt Lake City, or which may run into the territory northward of the parallel of Salt Lake City, Utah." Who drew that clause?

A. I do not remember.

Q. Well, that is rather broader than the one in the original agreement.

A. Practically the same meaning. It works both ways, don't it?

Q. Yes. The next clause does. But you cannot even advise or assist at this time; that was in the original agreement, and the original agreement seemed to relate to branch lines, and this prohibits you from extending your main line. So you knew when you agreed to that contract that you were prohibited from extending the main lines of the San Pedro Company beyond Salt Lake City, to the north?

A. Yes, sir.

Q. That was the end of that?

A. Yes, sir.

Q. It had to be the end of it for ninety-nine years?

A. Our original plan was to get to Salt Lake City.

Q. But your original plans were to be free to do as you pleased, after you got through, so far as the traffic, or additional
1069 building or anything else was concerned?

A. Well, I cannot say about that.

Q. Well, you say your original plan was to get to Salt Lake City?

A. Our original plan was to construct a line from Los Angeles to Salt Lake City.

Q. Did your original plan contemplate that you should not be free to engage in traffic upon whatever terms you pleased, and with whomsoever you pleased, after you got through?

Mr. KELLY. I think that is entirely immaterial.

Commissioner LANE. You may answer that, Mr. Clark.

WITNESS. I do not know that that thing occurred to us at that time.

Q. Didn't it occur to you at the time that you were going to be tied up with contracts that would prevent you from building into any other road's territory, when you projected the road?

A. I do not know that that ever occurred to us.

Q. And it never occurred to you until the trouble was made for you in getting through that Meadow Valley Wash, and then it seemed to you that you had to make an arrangement of some kind to avoid this litigation and trouble—isn't that true?

A. I think that is about correct. If we hadn't, we probably would have been tied up in the canyon yet.

Q. Yes; if my friends' legal ability lasted, and I have no doubt it would. Now that original memorandum, as you recall, provided that the interchange of traffic with the Short Line Company should be preferential, but not exclusive?

A. Not exclusive.

Q. I will turn to that. And that provision also applied to the Union Pacific?

A. Yes, sir.

1070 Q. And you so understood that at the time?

A. Yes, sir.

Q. You understood that in working business East of the Missouri River gateways, out of Salt Lake City, the terminus of your road, you were to work preferentially with the Union Pacific as against competitive lines?

A. Yes, sir.

Commissioner LANE. In order that you should get through that canyon, was the condition made that you should enter into that contract?

WITNESS. I do not think so.

Commissioner LANE. Why did you do it then?

WITNESS. I can not say now why it was done, except in order to carry out the construction of this line we would have gotten into litigation there and that would have probably continued for years, and there would not have been any line built through that canyon.

Commissioner LANE. But terms were offered upon which you could get through?

WITNESS. I think so.

Commissioner LANE. And you got through by making that contract?

WITNESS. Well, we built the line.

Commissioner LANE. Well, that contract gives the terms upon which you could build the line, isn't that so?

A. No; I don't think so. That contract provides that the San Pedro Company should take over certain tracks of the Oregon Short Line and other holding companies of theirs in Utah. The contract did not say any place, as I remember it, that by doing that, they would let us through the canyon.

Commissioner LANE. No; the contract would not expressly
1071 say so, but I understood you to say to Mr. Severance a few minutes ago that you probably would have been tied up there still if you had not entered into that arrangement.

WITNESS. Yes. I do not think there would have been any road built through there unless this arrangement had been entered into between the conflicting interests there. One was in about as good position to fight as the other.

Commissioner LANE. You think you could have held them up as long as they could have held you up?

WITNESS. Well, it was much easier for them, because they had a line from Salt Lake down to Caliente, and the controlling point was this side of Caliente; it was a narrow canyon, with a good many turns in it, and it was not practicable for two lines to build down there unless they were very friendly and had very close centers. They would have had to cross each other, if I remember correctly, about twenty-six times in a very few miles, which would make it pretty dangerous.

Commissioner LANE. They gave evidence of a sincere desire to build, did they?

WITNESS. I think so.

Commissioner LANE. They were coming this way, too?

WITNESS. They made no effort to build until after we had started or decided to undertake this project so far as I know.

Commissioner LANE. Did they hold out to you that they were going to build a road down into this territory?

WITNESS. They stated so.

Commissioner LANE. They stated so?

WITNESS. Yes, sir.

1072 Commissioner LANE. And it was upon the strength of that statement that you made this compromise agreement by which they kept out of the field, that you gave up one-half of the stock in the corporation?

WITNESS. I take it for granted that had its influence upon the final outcome of the matter.

Q. Didn't they say to you in the course of your negotiations, before this tentative agreement was entered into, in substance—I do not know in words, but in substance—that if you built your line through they would parallel it, and wasn't that argument made to induce you to enter into this agreement, by which you gave up half your stock?

A. I do not remember that.

Q. Well, in substance, if not in words, didn't they hold out to you that they would build in here along side of you?

A. Their actions may have strengthened that they would do that.

Mr. KELLY. I would like to help the Commissioner out on one point. Mr. Clark, at the time of the controversy down there through the canyon, the Short Line Road was claiming prior right to a located line, were they not?

WITNESS. They were.

Mr. KELLY. And they did have some ground to stand firm about that prior location? Your location was subsequent in point of time to the one on which they were standing?

WITNESS. Yes, sir.

Mr. KELLY. Now, the Meadow Valley Wash is probably a hundred miles in length?

WITNESS. From beginning to end, in round numbers.

Mr. KELLY. Some places there is a broad valley, and in a
1073 few places the wash has narrowed down to a pass for a short distance?

WITNESS. That is correct.

Mr. KELLY. I will ask you if it is not true that long before these negotiations on which this first contract of July 9, 1902, was made, the surveyors of the respective parties had gone through the canyon and laid down tentative locations, so that each road had a line practicable for construction through the entire canyon, only that they were required to cross each other frequently?

WITNESS. That is correct.

Mr. KELLY. That is what I want to get at. I wanted to clear up for the Commissioner the idea that it was a physical impossibility to get two lines through the canyon.

WITNESS. Yes. If I remember, it meant that if their line was built and we came in, we would have to cross them twenty-six times in not a great many miles.

Mr. KELLY. And the difficulties that were to be met would be such difficulties as pertained to the construction and location of the two parallel lines crossing each other so frequently, as they did, and then the difficulties, the practical difficulties of operating a railroad through there with that many grade crossings. Those were the principal difficulties from the physical standpoint, were they not?

WITNESS. Those were the difficulties that were considered very carefully.

Commissioner LANE. I understand that you both could get through without interfering with each other, excepting that you
1074 would cross each other twenty-six times?

WITNESS. Yes, sir, in every few miles.

Commissioner LANE. It was a difficult thing, but a possible thing?

WITNESS. It is possible, but it is not practicable.

Mr. KELLY. I wanted to clear up the idea that I understand you have that it was a physical impossibility to get through there.

Q. Then, Mr. Clark, as I understand you, in answer to Judge Kelly, you say that two roads could get through, but you say that they would have to cross each other twenty-six times in a few miles; but I think you said in answer to my question, it would make it very difficult of operation?

A. That is correct.

Q. Mr. Clark, that being the case, weren't you to a considerable extent influenced in making this compromise by the fact that you had been notified that a line parallel with or competing with yours would be built through to Los Angeles; was not that an element in the question, in addition to the difficulties of getting through this wash?

A. I don't know they ever said that, but we judged it by their actions.

Q. I asked you whether that fact did not operate on your mind in inducing you to enter into that agreement.

Mr. KELLY. Now, with all due respect, I think that the influence that the man may have turned over in his own mind——

Mr. SEVERANCE (interrupting). Strike out the question. I think you are right. You say you don't think they said that to you?

WITNESS. Not to my knowledge.

Q. Did they say anything of that kind to you?

1075 Mr. KELLY. That is objected to.

Q. Or did any of the other people say anything?

A. I don't think so.

Q. Did they ever say to you that they were going to build through to Los Angeles?

A. They did not.

Q. Did they ever say that they were going to build through that canyon?

A. I think they said they had the first right there, and were going to hold it.

Q. And going to build?

A. Going to build a through line.

Q. And what was the use of that line through the canyon aside from being a part of the through route of this region down here?

A. It would not be any good unless it was extended through.

Q. Just to lay down a railroad through that canyon would not do anybody any good, or furnish any business?

A. No, sir, unless it came on——

Q. (Interrupting.) Unless it came down here?

A. Or into Nevada, parts of Nevada which have developed into a mining country.

Q. They told you that they were in there and that they proposed to hold it and build a line through?

A. No.
Q. I thought that was what you said.
A. I said through the canyon.
Q. That is what I mean.
A. Yes, sir.
Q. And they knew, you say, it was a matter of common notoriety that you proposed to build a line through to Los Angeles?
A. Yes, sir.
Q. You were building at the lower end at the time?
A. We were building on this end.

1076 Commissioner LANE. What was the action you spoke of? You said that while they did not tell you, that their actions indicated that they intended to go on.

WITNESS. You may put a different construction on that. That is, the fact that they said they were going to hold that canyon would be some indication that they were going some place else.

Commissioner LANE. They said they were going to hold the canyon, and the indications were that they were going some place else?

WITNESS. They claimed the first right; they evidently had rights there that we had to respect.

Mr. KELLY. Didn't they buy the Utah and Pacific, a seventy-five mile line, and build forty-five miles down to Caliente as fast as they could do it?

WITNESS. Yes, sir.

Mr. KELLY. And provided a lot of material for further construction?

WITNESS. Yes, sir.

Q. When did they start that construction that Judge Kelly has just spoken of?

A. The Utah and Pacific, from Milford, Utah, was owned by A. W. McCune and his associates, and they bought that as soon as it was noised around that we expected to build a line from Los Angeles to Salt Lake City.

Q. They bought that after it was noised around that you were going to build a line?

A. They had a portion constructed, and then they extended their line from Uvada to Caliente, about 42 miles in round numbers.

Q. They didn't do that until it was noised around that you

1077 were going to build a Salt Lake road?

A. No, I think not.

Mr. KELLY. Mr. Clark, will you permit me to correct you? Isn't it true that they did that, that they bought the Utah and Pacific before the San Pedro road was incorporated?

WITNESS. Yes, sir, that is correct, so far as the purchase of the Utah and Pacific is concerned.

Q. I am speaking of the construction of this other line, the 40 miles which Judge Kelly so proudly states was bought. Was that done before it was noised around that you were going to build a Salt Lake road?

A. No, sir. That was constructed afterward.

Commissioner LANE. What time was the Utah and Pacific bought by the Short Line?

Mr. KELLY. I can give you the history of that very briefly. The old Oregon Short Line and Utah Northern Railway owned a line extending southwardly from Salt Lake through Milford and through to the Utah State line, and they claimed to own, and I believe did own, the grade from the Utah State line through to the Meadow Valley Wash, about forty odd miles. After the foreclosure of the old mortgage of the Oregon Short Line and Utah Northern Railway Company, the new company bought it in. The rails, however, were not down on that portion of the line south of Milford, and they made an arrangement by which the Utah and Pacific Company, a local Utah company, acquired the right to build a line and operate it from Milford to Uvada. In that arrangement they took an option from the Utah and Pacific people to take that property over at their pleasure——

Commissioner LANE (interrupting). What year was that?

Mr. KELLY. That was about—I may be mistaken about this; I am only relying upon my recollection, but my recollection is
1078 that it was in the latter part of 1898 that the Utah and Pacific people built their little line and it is my recollection that it was in 1900 that the Short Line Company actually took it over.

Commissioner LANE. In 1900?

Mr. KELLY. Yes, sir.

Commissioner LANE. What time was it?

Mr. KELLY. Before any of this trouble came on.

Commissioner LANE. What time was it that the first announcement was made of the possibility or probability of this road from Salt Lake City to Los Angeles being built?

WITNESS. I think early in 1901.

Commissioner LANE. Not until 1901? At that time the Utah and Pacific had been turned over to the Oregon Short Line?

WITNESS. Yes, sir.

Commissioner LANE. That had been taken up?

WITNESS. That had been taken up with the Oregon Short Line.

Q. But the 40 mile extension which Judge Kelly spoke of had not been built?

A. It had not been built from Uvada to Caliente.

Commissioner LANE. It began in March, 1901?

Mr. KELLY. About that time.

Commissioner LANE. The first contract was made in July, 1901, wasn't it?

Mr. KELLY. 1902.

Mr. SEVERANCE. The first contract between Harriman and Clark was in 1902.

Commissioner LANE. That is what I understand. That was July, 1902?

Mr. SEVERANCE. Yes, sir.

Q. In addition to having these surveyors laying out this line
1079 in the pass, did the Oregon Short Line have their surveyors surveying this way toward Los Angeles?

A. They had for a time.

Q. How is that?

A. I understood so.

Q. You knew that at the time?

A. They ran a line going in across the Santa Fe, I think about Ludlow, and came in and connected with the Southern Pacific at some point beyond Banning.

Q. And they ran a line there across the Santa Fe?

A. I think, to the best of my knowledge—I am sure they ran the line down to Ludlow; whether they ran it this side of it, I don't know.

Q. From the other end to Ludlow?

A. Yes, sir.

Q. How far from Los Angeles is Ludlow?

A. I think it is about 200 miles.

Q. And the line that they had projected there through this wash extended on down to this place at Ludlow?

A. Yes, sir.

Q. That is the surveyed line?

A. Yes, sir.

Q. Was that one of the actions of the Oregon Short Line that made you think that they were contemplating building through—the fact that they surveyed a line down there?

A. I presume that had some bearing on it.

Q. How near to your projected line did that line run?

A. Well, after leaving the Meadow Valley Wash, or after leaving Las Vegas, this side of Las Vegas, we separated; we came in a northwest direction and they ran, I should think, pretty nearly west.

Q. How far is Las Vegas—is that the place you spoke of?

A. Yes, sir.

Q. How far is that from this wash?

A. Las Vegas is about 125 miles west of Caliente.

Q. And up to that point from Caliente the surveys ran side
1080 by side, practically?

A. No, the Meadow Valley Wash, more than half of it—what we call the Meadow Valley—is west of Caliente; between Caliente and Las Vegas.

Q. I say clear down to Las Vegas they ran anywhere through the wash, but outside of that they ran practically parallel to part of it?

A. That was the information I had, that they ran that way.

Q. And then there was a separation?

A. Yes, sir.

Q. But were they both tending in this direction?

A. They were both tending in this direction.

Commissioner LANE. Mr. Severance, I suppose you will not conclude with this witness in the course of a few minutes?

Mr. SEVERANCE. No, sir.

Commissioner LANE. Well, we will at this time take an adjournment until two o'clock this afternoon.

(At 12 noon the Commission adjourned until 2 p. m.)

J. ROSS CLARK

recalled, and examination resumed:

Mr. SEVERANCE. If your Honor please: There is a matter that I neglected this morning, and I have just spoken to my friend, Mr. Dunne, about it. We had an arrangement the other day, when we adjourned in San Francisco, that we would make a stipulation in the record covering a certain matter. I will state it, and if I am not quite correct you will correct me, Mr. Dunne, if you please. It is agreed that the Southern Pacific Company and the Oregon Railroad & Navigation Company make no through rates in con-
1081 nection with lines or boats across the Pacific, with the exception of the Portland & Asiatic Steamship Company, the Pacific Mail Steamship Company, the Toyo Kisen Kaisha, and the Occidental and Oriental Steamship Company, these being the lines that are mentioned in the testimony as being managed by Mr. Schwerin; that any other lines of boats bringing in traffic terminating at San Francisco, have to pay the San Francisco rate to the East, aside from the steamship rate across the Pacific. That is right, is it not?

Mr. DUNNE. Yes.

Commissioner LANE. Does that apply to both outgoing and incoming business?

Mr. SEVERANCE. Yes, as I understand it, it applies to both.

Mr. DUNNE. That is our understanding.

Commissioner LANE. They do not make through rates in connection with any of the lines except those you have mentioned?

Mr. SEVERANCE. They do not make through rates in connection with any lines except those I have mentioned, no.

Mr. J. C. STUBBS. The interchange between those steamships now since August 28th is covered by published through tariffs, and it is only with the steamship companies with whom we publish through tariffs that we interchange business upon an arrangement upon a division of through rates.

Mr. SEVERANCE. And I have named the companies?

Mr. STUBBS. And you have named the companies.

Mr. SEVERANCE. Will you now read the last question that I asked Mr. Clark before lunch, Mr. Reporter?

(The last question and answer repeated by the reporter.)

1082 Q. Now, I find, Mr. Clark, another provision in this contract with the Union Pacific, and the Oregon Short Line, to which I would like to call your attention. It is contained in Section 2 of this

contract, "Exhibit 41, Alexander Millar." That section reads: "Now, therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro Company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line Company and said Union Company and their respective connections, shall be forwarded exclusively, insofar as that may lawfully be done, by way of and over the lines of said Short Line Company and said Union Company"—which is the Union Pacific, "In consideration whereof, said Short Line Company and said Union Company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of San Pedro Company exclusively in connection with said San Pedro Company, against any and all said San Pedro Company's competitors." You remember that clause, do you?

A. Yes, sir, I remember it very well.

Q. Mr. Clark, that clause would cover, would it not, so far as traffic originating on your line is concerned, all traffic moving to the East, to the Missouri River and all points beyond it?

A. I am not quite clear about that, Mr. Severance.

Q. The Union Pacific runs to the river?

A. Runs to the river, yes.

Q. And you agreed that all traffic that is taken up or laid down on your lines in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of

1083 the lines of said Short Line Company and said Union Company, and their respective connections, shall be forwarded exclusively, that is, so far as it may lawfully be done.

A. Yes, sir.

Q. That would cover all traffic moving to the East, would it not?

A. Well, I should suppose——

Q. (Interrupting.) By the East, I mean to the Missouri River or points beyond.

A. It does not say anything about points beyond.

Q. It says over the lines of said Short Line Company and Union Company and their respective connections.

A. And their respective connections?

Q. Yes, and their respective connections.

A. Well, I would say yes.

Q. So that you agreed, so far as you lawfully may, to send all traffic that originates on your lines in Utah, to the East over the Union Pacific and Short Line, as against any competitor of those lines.

A. Yes, sir.

Q. And that would make it your duty, would it not, to send that traffic over the Short Line and Union Pacific as against the Denver and Rio Grande and its Eastern connections?

A. Not if the freight was routed over the Denver and Rio Grande; we would not have any right to divert it.

Q. That is because you think you might not lawfully do it?

A. I presume that is what is intended to be conveyed.

Q. But where the traffic is delivered to you for transportation, without specific directions that it be routed over the Rio Grande, if it is moving to any point in the East, traffic originating in Utah,

1084 you intend to move it over the Union Pacific?

A. Out of respect to that contract, we have to route it over the Union Pacific.

Q. And, on the other hand, they agree that they, in soliciting traffic, which terminates on your lines, that is, where the Union Pacific or Short Line Companies are soliciting traffic which terminates on your line for transportation, they will turn over to you exclusively such traffic, instead of to your competitors?

A. Yes, sir.

Q. What competitors have you in Western Utah?

A. The Denver & Rio Grande is the only competitor.

Q. In what part of the territory do they compete with you?

A. They compete as far south as Provo on their main line.

Q. How far is that from Salt Lake City?

A. About 40 miles. And they also have a branch running down to Marysville or Marysvale, I am not sure which, down in the San Pete country.

Q. How far is that from Provo?

A. I should say, offhanded, about 125 miles.

Q. In which direction does that run?

A. Southwest.

Q. Is that branch competitive with your line?

A. Yes, sir.

Q. There is a lot of territory——

Mr. KELLY (interrupting). Just a moment, if you do not object, Mr. Severance.

Mr. SEVERANCE. Certainly not.

Mr. KELLY. Mr. Clark, there is another line that you have not mentioned, the line that runs to the Tintic district.

WITNESS. Yes, sir, they are competitive with us in the Tintic district as well. I had forgotten that.

Q. What lines have you with which they are not competitive, Mr. Clark?

1085 A. Well, I should say our lines from Milford south would not be competitive.

Q. How long is that?

A. From Milford to the Utah line is 75 miles.

Commissioner LANE. Have you a map there showing this territory?

Mr. KELLY. I haven't a map here, your Honor, but I will bring one in tomorrow and show it to your Honor.

Q. I would like to find the territory that this covers.

A. By way of explanation, there is a range of mountains between the San Pedro line running south, the Salt Lake Line, and the

Denver & Rio Grande line, a range in there that they haul goods over in either direction, and also drive sheep.

Q. They what?

A. They can haul goods over that range.

Q. But do they, as a matter of fact, do that to any extent?

A. To some extent, I believe.

Q. How far apart are those lines?

A. Well, I can't tell. I should say, offhand, about 50 miles at Milford.

Q. With a range of mountains in between?

A. Yes, sir.

Q. What class of traffic is there that originates there?

A. There is a good deal of merchandise shipped down into that country, and there is some wool originates there and goes out, and cattle and sheep.

Q. And to send out that wool or those cattle and sheep by your line, for instance, upon which the wool is produced, or the cattle are produced, in the other valley, it would be necessary to drive them over the mountain range?

A. Yes, sir.

Q. Is that very often done, sir?

A. I can't say.

1086 Q. Is there any line of the Rio Grande there that is nearer to your line than fifty miles, except the line down to Provo?

A. And the Tintic—excepting the Provo and Tintic, I should not think there is—after the diverging point; they go over into the San Pete country, and they keep through down on the plains there, probably the Escalante Plains.

Q. Then the lines, as I take it——

Commissioner LANE. Just wait a moment there, please.

Q. (After a pause.) As I understand your statement, then, the lines that are substantially competitive with yours are the lines of Provo and what is called the Tintic line?

A. The Tintic district.

Q. The Tintic district?

A. The line to the Tintic mining district.

Q. What lines have you that are not competitive with that line? You spoke about one of 75 miles in length. Are there any others?

A. There is a branch from Milford into 'Frisco that would not be competitive.

Q. What kind of territory is that?

A. The 'Frisco and Newhouse—it is a mining country there, and the line is about 24 miles long.

Q. Has it a large or small traffic?

A. Comparatively small; it is increasing.

Q. Are there any other lines that are owned by your company that do not compete for business with the Rio Grande?

A. No, sir, I think not.

Q. Those are the only ones you think of?

A. Yes, sir.

Mr. KELLY. We might save time—it is not exactly regular,
1087 I know, but perhaps I can save time by asking a question here.

Mr. SEVERANCE. Certainly.

Mr. KELLY. Mr. Clark, is there not a line all the way down as far as Milford that is competitive with yours? In other words, is not your line all the way down as far as Milford competitive with the Rio Grande?

Commissioner LANE. A little louder, please, Judge.

Mr. KELLY. Is not the line south, say, from Lynn, all the way down as far as Milford, and as far as Provo, competitive with the Rio Grande on wool and live stock?

WITNESS. Yes, sir, I would say it is—as far as Milford anyway.

Mr. KELLY. As far as Milford, anyway, for they can drive them to and fro either way.

WITNESS. Yes, sir.

Q. That is how far from the other line?

A. My impression is that it is about 50 miles.

Q. That is, the line that you speak of in the other valley is about 50 miles away?

A. Yes, about 50 miles away.

Q. Now, calling your attention to section 4 of this contract, which is a repetition, practically, I believe of language in the agreement, "nothing in this agreement contained shall be construed as limiting the rights or privileges or the practices of the Union Company or of the said Short Line Company, and each of them, in respect to interchange of traffic each with the other and each with the Southern Pacific Company, as fully as before this agreement was made." You understood that contract, did you?

A. Yes, sir, I did.

1088 Q. That provision, I should have said?

A. Yes, sir.

Q. So that you understood that as to shipments to Los Angeles, we will say, from the East, the Union Pacific was under no obligation, unless it saw fit to do so, to route traffic by your line, but they had the right to send it round by Sacramento?

A. I don't understand it in that way, Mr. Severance.

Q. Just explain what that provision means. I will read it to you again.

A. I understand it.

Q. "Nothing in this agreement contained shall be construed as limiting the rights or privileges or the practices of the Union Company or of the said Short Line Company, and each of them, in respect to interchange of traffic each with the other"—that is, the Union and the Short Line—"and each with the Southern Pacific Company as fully as before this agreement was made."

A. In the first place, the Union Pacific agreed with us to treat our line as a preferential line, that is, we so understood it, for Southern California business.

Q. That is what they say?

A. They had practically an arrangement for handling coast business that would not interfere with us in any way.

Mr. DUNNE. What did you say—handling what?

WITNESS. Handling the San Francisco business, I mean.

Mr. DUNNE. Oh, the San Francisco business?

WITNESS. Yes, sir.

Q. But here is an explicit agreement, Mr. Clark, an explicit provision in this agreement, that nothing in the agreement contained shall be construed as limiting the rights or privileges or the practices of the Union Company, or the Short Line Company, or each of
1089 them, in respect to interchange of traffic, each with the other and each with the Southern Pacific Company, as fully as before this agreement was made. Now, previous to the making of that agreement, did not traffic moving from the East over the Union Pacific move to Los Angeles by way of Sacramento?

A. Yes, I understand so.

Q. And did you not understand that by this contract you were giving them the right to continue to move traffic in that way as fully as if this agreement had not been made?

A. Not if our preferential agreement with them was any good.

Q. But your preferential agreement, Mr. Clark, is subject to this provision, Section 4, is it not?

A. Not on business to be delivered in Southern California.

Q. Will you just take this agreement and show me anything that protects you against that?

Mr. DUNNE. If your Honor please, this is asking the witness to determine a question of law, to go into the interpretation of a written contract.

Commissioner LANE. Mr. Severance wants to know just what it contains, as I understand him.

Mr. DUNNE. Mr. Clark has already testified to that.

Commissioner LANE. I think it is a fair question to ask him, and let him look at it and see if there is anything in there to lead him to change his opinion.

WITNESS. What section is that, Mr. Severance?

Mr. SEVERANCE. That is the section at the bottom of that page there. It is marked there, so that you can easily distinguish it.

WITNESS (after examining the document). Well, if there is
1090 any other construction to be put on it than what I have already given, I don't think I am capable of doing it.

Mr. KELLY. Mr. Clark, may I suggest to you there: Was it not contemplated at the time that contract was made that the new line, when constructed, would furnish different conditions, upon which you expect preferential service from the Union Pacific road?

WITNESS. Yes, sir.

Mr. KELLY. For Southern California business?

WITNESS. That is correct.

Mr. KELLY. Still, consigned business going through by the Union Pacific and the Southern Pacific Company goes that route just as it did before?

WITNESS. Yes, sir.

Mr. KELLY. Consigned business? It is in respect to unconsigned business that I asked you, so far as your road is concerned.

WITNESS. Yes, sir. Nothing that I see prevents them from doing that.

Mr. SEVERANCE. That is a very nice explanation that our friend Judge Kelly suggests to you, Mr. Clark, but let me call your attention again to this thing. In the first place, you have got a contract with them that they shall deal with you preferentially, but not exclusively as to the through business. Then you have your exclusive agreement as to the Utah business. Now, having given you those rights, the contract proceeds: "Nothing in this agreement contained"—very sweeping, you see—"shall be construed as limiting the rights or privileges or the practices of the Union Company,
1091 or of the said Short Line Company, and each of them, in respect to interchange of traffic each with the other and each with the Southern Pacific Company, as fully as before this agreement was made." Now, what is there left of your preferential agreement, insofar as it affected the Southern Pacific business?

Mr. KELLY. If your Honor please, I don't think that question is proper.

A. Well, as I said before, my understanding of the matter was that we were to be the preferential line, and I think we have been, for Southern California business.

Q. That is to say, you would be the preferential line, you mean, if they chose to make you that, do you not, as against the Southern Pacific?

A. Well, I never considered it that way: I never put that construction on it.

Q. Don't you think, Mr. Clark, that when a contract says that nothing herein contained shall affect the relations between the Southern Pacific Company and the Union Pacific, that it means what it says?

Mr. KELLY. If your Honor please, that may be asking for an argument.

Mr. SEVERANCE. I am trying to get at the understanding of the witness.

Mr. KELLY. He has given his understanding, I submit.

Mr. DUNNE. He has given his understanding and given the practice also, the preferential practice.

Commissioner LANE. I think I understand the answer. Your statement, Mr. Clark, is that they did agree to give you privileges on Southern California business?

1092 WITNESS. Yes, sir.

Commissioner LANE. That is to say, a preference?

WITNESS. Yes, sir.

Commissioner LANE. And so far as they have given you that preference?

WITNESS. So far as I know.

Commissioner LANE. Mr. Severance's question leads to this: Is it your understanding of the contract that they cannot withdraw that preference at any time they desire, under that clause?

WITNESS. That has always been my understanding of it.

Commissioner LANE. That they cannot withdraw it, you mean?

WITNESS. That they could not, yes.

Commissioner LANE. That it is binding upon them?

WITNESS. Yes, sir, unless they want to violate their whole contract.

Commissioner LANE. As to the Southern California business, you are to have it as against the Sacramento route?

WITNESS. That is my understanding of it.

Q. Mr. Clark, who put that section in the contract that provides that the contract shall be ineffectual as far as relations with the Union Pacific and Southern Pacific are concerned?

A. I don't remember.

Q. Was that called to your attention at the time you agreed to this contract?

A. I am under the impression that it was. I was pretty familiar with the contract at the time before it was signed.

Q. Will you kindly state what the purpose of that clause is, if it is not what it says?

A. Beyond the explanation that I have given you, I don't
1093 know that I am qualified to give any other explanation.

Q. I do not understand that as yet you have given any explanation of that clause, Mr. Clark. You gave an explanation of the preferential matter.

A. From my standpoint, I have.

Q. Will you be kind enough, if I did not catch it, to repeat it then, and state the purpose of putting that clause in the contract?

A. The preferential clause?

Q. No, sir. This clause, Section 4, to preserve the right to the traffic with the Southern Pacific, the right to route traffic as they liked with the Southern Pacific?

A. Well, as I have just said, I don't think I am capable of saying or explaining that matter.

Q. So you don't know who put that in the contract, nor do you know the purpose of putting it in the contract, and you did not at the time. Is that right?

Mr. KELLY. I object to that, because that is assuming what the witness has not said.

Commissioner LANE. He may answer the question.

A. I knew it was in the contract before that contract was signed.

Q. Did you know why it was there?

A. No, sir, I don't know that I could say why.

Q. Do you know who put it there?

A. No, sir, I don't know who suggested it.

Q. Did you direct that it should be put in there?

A. No, sir, I did not.

Q. Did your associates, so far as you know, ask to have that clause put in the contract?

Mr. DUNNE. He has said he does not know who put that
1094 clause in the contract.

Commissioner LANE. He can answer the question as asked.

Mr. SEVERANCE. Don't be so disturbed, Mr. Dunne, about a question of that sort.

Mr. DUNNE. You are repeating this question over and over again to this witness.

Mr. SEVERANCE. Yes; I am.

Commissioner LANE. This is a beautiful place, and pleasant for us to remain in, Mr. Dunne.

Mr. DUNNE. It is a lovely climate, your Honor—go ahead, Mr. Clark.

Q. Mr. Dunne having consented, you may now answer, Mr. Clark.

A. As I have said, I don't remember who suggested that clause, but I am under the impression that it was none of our associates.

Q. Yes; that is what I thought.

Mr. KELLY. I think I recall what you said a while ago, and that will answer Mr. Severance's question and refresh his recollection. I believe you said there was a large amount——

Mr. SEVERANCE (interrupting). I would like to hear what you say, Judge. Don't be so confidential with the witness.

Mr. KELLY. Pardon me. I can't talk as loud as I ordinarily do. Mr. Clark, you stated a little while ago that there was a considerable amount of interchange of business between the Union and the Southern Companies and the Short Line Company, at Ogden, known as the Coast business or San Francisco business.

WITNESS. Yes, sir; San Francisco business.

Mr. KELLY. Was it not the purpose of that provision to provide that there should be no controversy but that San Francisco business, and all of the business, other than Southern California
1095 business, should go along just as it had before, without reference to this contract?

WITNESS. That that contract should not be disturbed.

Mr. KELLY. That is it, generally.

Mr. SEVERANCE. Is that all, Judge?

Mr. KELLY. Yes; he gave that answer a little while ago.

Q. Then, as I understand this suggestion of Judge Kelly, to which you assent, the purpose was not to interfere with the San Francisco business. Was it contemplated that the Salt Lake Road would run to San Francisco?

A. Not at that time.

Q. Therefore, can you give any reason why it was necessary to protect San Francisco business against the competition of the Salt Lake, which ran 500 miles south of San Francisco?

A. I don't know, unless they had in mind that we might haul it down here and ship it up by boat, or something of that kind.

Q. You think that might have been it. Is that your best, Mr. Clark? Is that the only explanation you can make?

A. I don't know any other explanation. We have no rails nearer than Los Angeles. That is possible to do that, Mr. Severance, of course.

Q. Oh, yes; it is possible, of course. It never has been done very much, has it?

A. Not to my knowledge.

Q. What is the distance between Ogden and San Francisco?

A. About 800 miles.

Q. What is the distance from Ogden to Los Angeles?

A. 780 miles.

Q. What is the distance from San Francisco to Los Angeles?

A. About 480 miles. I may not be quite correct about the distance from Ogden to Frisco. I think it is a little over 800 miles.

1096 Commissioner LANE. Mr. Clark, do you think that that was the purpose of putting that provision in the contract, to secure the San Francisco business to the Southern Pacific?

WITNESS. I don't see any other purpose that it could have been put in there for, Mr. Lane.

Commissioner LANE. Was that the purpose for which it was put in?

WITNESS. Well, I can't say.

Commissioner LANE. You don't know?

WITNESS. I don't know and I can't say. That would be my idea about it. I don't see what it could have been put in for, if it was not for that purpose—don't see what other purpose it could have been put in for.

Q. Section 6 of this contract reads as follows: "It is covenanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and make through rates between points, that is, in both directions, on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah, for business which said Short Line Company or said Union Company might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company. Provided, however, that on demand, said Short Line Company and said Union Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business." You are familiar with that, are you, Mr. Clark?

A. Yes, sir.

Q. And you were familiar with it at that time?

A. Yes, sir.

1097 Q. And you knew that unless it was necessary to make a change in those rates by reason of the competition from some outside line, the Union Pacific Company and the Short Line—they are all together, of course, the Short Line being owned by the

Union Pacific—should have a right to make all the rates, the through rates, both in and out of Utah, in connection with your road?

A. That is as I understand it.

Q. And you knew that, in the first instance, in making these rates you would have nothing whatever to say, did you? You understood that, did you?

A. Well, I expect we would have to be governed by what the contract provided.

Q. You understood that at the time, did you, that you were giving away to them the right to make the rates in and out of Utah?

A. Yes, sir.

Q. To points on your line?

A. I understood that.

Q. And that that was absolute to non-competitive points, and as to the competitive points a change to meet competition only.

A. That is my understanding.

Q. And you fully understood that at the time?

A. Yes, sir.

Commissioner LANE. How many miles have you in Utah, Mr. Clark.

WITNESS. About five hundred and—well, something like 500 miles, I think, branches and all: that is, from Salt Lake and——

Commissioner LANE (interrupting). What is your total mileage?

WITNESS. Branches and all, something over a thousand miles.

Commissioner LANE. So that as to one-half of that mileage, the Union Pacific can make the rates?

WITNESS. According to this contract.

1098 Commissioner LANE. According to that contract?

WITNESS. Yes, sir.

Commissioner LANE. That contract is still in force?

WITNESS. That is still in force.

Commissioner LANE. You are treating it as still in effect?

WITNESS. We are treating it as still in effect; yes, sir—as far as I know.

Commissioner LANE. How is that procedure carried out in practice as to the making of rates? Does your traffic manager receive from the Union Pacific the rates that they wish to be enforced along the line in Utah?

WITNESS. I don't think I am competent to answer that, Mr. Lane. That is a traffic matter.

Commissioner LANE. You don't know how they are put forth, as a matter of fact?

WITNESS. I could not say.

Commissioner LANE. You do not know who makes the rate?

WITNESS. No, sir; I do not.

Commissioner LANE. Do you know whether your own traffic manager makes the rate, or whether the Union Pacific traffic manager makes the rate?

Witness. Well, I am under the impression that all the rates that have been made there have been made by our own people, our own traffic manager. But he will be able to tell you better than I as to that.

Commissioner Lane. That is to say, he publishes those rates, where they are through rates, and have to be filed with the Interstate
1099 Commerce Commission; they are filed by your traffic manager with the Interstate Commerce Commission, in that case, the case of through rates?

Witness. Filed by our traffic manager, yes.

Commissioner Lane. But you do not know whether he receives those rates from the Union Pacific or not?

Witness. No, sir; I do not.

Commissioner Lane. Has there been any question arising, has any question arisen between your company and the Union Pacific as to any rates in Utah?

Witness. Not to my knowledge.

Commissioner Lane. That is all.

Q. Mr. Clark, a question occurs to me in this connection. You say you don't know about this. What did you say your position is? Are you second Vice-President?

A. Second vice-president.

Q. Who holds the office of First Vice-President?

A. Mr. W. H. Bancroft, of Salt Lake City.

Q. Aside from being First Vice-President of your line, what other business has Mr. Bancroft?

A. He is general manager of the Oregon Short Line.

Q. And he is also general manager, is he not, of a portion of the Southern Pacific lines?

A. I believe so, extending as far as Sparks.

Q. Extending east of Sparks, yes. Also of a portion of the Union Pacific, west of Green River?

A. I understand so, yes; west of Green River.

Q. And he is your First Vice-President?

A. Yes, sir.

Q. And you are the second?

A. I am the Second Vice-President.

1100 Q. Mr. Bancroft lives in Salt Lake City?

A. Yes, sir.

Q. What are your functions, Mr. Clark?

A. Oh, there are quite a good many of them.

Q. To whom does your general manager report?

A. He reports to a special committee.

Q. Who is the committee?

A. Mr. Bancroft and myself.

Q. Mr. Bancroft and yourself?

A. Yes, sir.

Q. You have frequent meetings?

A. Not very, no.

Q. What does he make—duplicate reports to you?
A. Yes, sir.
Q. How frequently?
A. Oh, whenever occasion demands it.
Q. At no stated times?
A. At no stated times. The general manager has charge of the operations, and if he wants to spend some money, he makes a requisition for it and puts it up to the special committee.
Q. He puts it up to the executive committee, which consists of Mr. Bancroft and yourself?
A. Yes, sir—no, not to the executive committee, but to the special committee.
Q. Have you also an executive committee?
A. Yes, sir.
Q. Who compose the executive committee?
A. My brother, W. A. Clark, Mr. R. C. Kerens, Mr. E. H. Harriman, and Judge W. D. Cornish, of New York.
Q. That is evenly divided, is it?
A. Yes, sir.
Commissioner LANE. Who has charge of the traffic?
WITNESS. The traffic department reports to the general manager.
Commissioner LANE. And who is the head of your traffic department?
WITNESS. At the present time, Mr. F. A. Wann.
1101 Q. Mr. Wann was formerly with the Alton road, was he not?
A. Yes, sir.
Q. How recently has he taken charge of the traffic for you?
A. The third of January his duties commenced with our company.
Q. Who employed Mr. Wann?
A. My brother.
Q. Do you know at whose suggestion?
A. Yes. I think there were several people after Mr. Gillett had resigned—there were several suggestions given to my brother with regard to Mr. Wann, one of them was from Mr. J. M. Hannaford, connected with the North Pacific, and another one was Mr. Ed Dickinson, I think.
Q. Connected with the Union Pacific?
A. No, sir; with the Stillman road—I don't remember the name of the road, but a road building from Kansas City south.
Q. Were the executive committee consulted about the appointment of Mr. Wann?
A. I think so.
Q. Was the special committee consulted?
A. No, sir.
Q. Only the executive committee?
A. Only the executive committee.
Q. Who preceded Mr. Wann?
A. Mr. Gillett; Mr. E. W. Gillett.

Q. Was there an interregnum between Mr. Gillett's incumbency and Mr. Wann's, or did Mr. Gillett hold until Mr. Wann took up the duties of the position?

A. There was a short interim there of—I don't remember the time exactly, but probably thirty days, and maybe longer—perhaps longer.

Q. Did Mr. Wells have charge of the traffic during that time?

A. Yes, sir—well, Mr. Gillett's subordinates carried it along during that time, in connection with the general manager.

1102 Q. Then, as I understand your organization, Mr. Clark, the head of your traffic department reports to Mr. Wells, the general manager?

A. That is correct.

Q. And Mr. Wells, the general manager, reports to a committee consisting of Mr. Bancroft and yourself?

A. Yes, sir.

Q. What are the functions of the executive committee?

A. Oh, if they want to expend a large amount of money, we submit that around in the regular way; I send that around to my brother, who is chairman of the executive committee, and I ask for the approval or disapproval of the executive committee. All minor matters do not go up to them; it is only where we want to spend large sums of money that the matter is referred to the executive committee.

Q. You have the rather unusual situation of executive committees and special committees composed of an even number?

A. Yes, sir.

Q. Has there been any discord as to the policy of extension, or anything of that kind, between members of the committee at any time?

A. None whatever that I know of.

Q. And since this contract was entered into everything has been conducted harmoniously?

A. It has, so far as I know.

Q. All around?

A. All around.

Q. Without any dissent?

A. Without any dissent, yes, sir.

Q. To the best of your belief. Is that right?

A. That is correct.

Q. When did that form of organization begin?

A. I should say about a year and a half ago. I won't be positive as to the dates. I think about that, or may be it is a little longer than that.

Q. Did it begin immediately after the road was completed through?

A. Yes, sir. I can't tell you the exact date. It was

1103 in May, nineteen hundred and——

Q. (Interrupting.) Five?

A. Five.

Q. It was about the first of May, 1905, that you ran the first train, was it not?

A. Yes, on the first of May, 1905.

Q. Prior to that time, the line had been under construction?

A. Under construction, yes. We had operated on the two ends.

Q. On the two ends?

A. Yes, sir.

Q. And who had immediate charge of the operation of the eastern end of the road during that period?

A. During the construction period?

Q. Yes.

A. Mr. Wells.

Q. He lived then in Salt Lake?

A. He lived during that time in Salt Lake.

Q. What road did he come from to your road?

A. He came from the Ash Fork, Prescott & Phoenix.

Q. Down in Arizona?

A. Down in Arizona.

Q. And he took charge of the operation at the other end?

A. Yes, sir.

Q. And who had charge of the operation of this end?

A. Just a moment.

Q. Pardon me, I thought you had finished.

A. After we had purchased the Los Angeles Terminal Company, Mr. Wells was here for a time. He was in Los Angeles until the San Pedro Company took over the Short Line road in Utah, and then he was transferred up there and put in charge of that.

Q. Who had charge of the business here, before you completed the line through? Who had charge of the management of this end of the line?

A. I did.

1104 Q. You had charge of that yourself?

A. Yes, sir, I did. It was along towards—it was for the reason that we had a long gap between there and here and had no telegraph lines, and the superintendent here—it was an unusual organization, the superintendent reported to me.

Q. Now, Mr. Clark, after you had built this end of the line, that you had charge of—as I understand you, you first built to Riverside and then connected up there with the Santa Fe—the Southern Pacific and then the Santa Fe?

A. Yes, sir.

Q. And then built on the end from the Santa Fe. That is, you built on from some point on the Santa Fe?

A. Built from Daggett on to the East.

Q. As fast as that line was constructed, I assume it was open for operation, was it not?

A. Only to Riverside.

Q. Only to Riverside?

A. We did not operate any lines beyond Riverside until the line was opened through.

Q. And when was the line to Riverside finished?

A. In 1903. I can't give you the date definitely, but I should say some time in 1903.

Q. It was some time, at any rate, after the making of this contract of July, 1902?

A. After that, yes.

Q. Yes, sir; when you opened your line to Riverside, did you adopt the rates then in force on the Southern Pacific between here and Riverside?

A. I am under the impression that we did.

Q. What is the largest traffic out of this region?

A. The largest one item?

Q. Yes, the largest single item.

1105 A. Citrus fruits, I think.

Q. Yes, sir. And citrus fruits move to Utah common points, Idaho, Montana, and other regions up there?

A. Yes, sir.

Q. Over your line?

A. Yes, sir.

Q. How does your rate on citrus fruit compare with the Southern Pacific route, by way of Sacramento—from here?

A. I don't know that I am qualified to answer that.

Q. You do not know about that?

A. I understand it is practically the same rate.

Q. Is it not exactly the same?

A. Well, I presume it is.

Q. And is not the rate from Los Angeles to Utah common points by way of Sacramento just the same as it has been for many years?

A. It is not.

Q. The rate on citrus fruits?

A. Oh, the rate on citrus fruits?

Q. That is what I am talking about.

A. I thought you meant other freights. As far as I know, it is.

Q. And the fact that your road is 500 miles shorter to Ogden did not result in any diminution of the freight rate upon this traffic, which you say is the most important item out of Los Angeles?

A. No, sir, it did not.

Q. No. It remained the same?

A. Yes, sir.

Commissioner LANE. Do you use coal on your line in Utah?

WITNESS. We use coal on our engines from Salt Lake City, and even up to Las Vegas. Now, however, we are dropping back to Calientes.

Commissioner LANE. Where do you get your coal?

WITNESS. Get it off the Denver & Rio Grande, from the Utah Fuel Company.

Commissioner LANE. From the Utah Fuel Company.

1106 WITNESS. Yes, sir.

Commissioner LANE. Do you have any coal along your line?

WITNESS. We have none on the line.

Commisioner LANE. You have none on your line?

WITNESS. No, sir. We have to depend upon other roads to deliver our coal to us. The coal is delivered at Provo.

Commissioner LANE. And you get your oil from California?

WITNESS. From California, yes.

Commissioner LANE. How far eastward do you operate with oil?

WITNESS. From Los Angeles to Calientes, about 460 miles, I should say.

Commissioner LANE. And that oil comes from where?

WITNESS. The oil that we are using here in Southern California is delivered to us here from the local fields and the oil that we use beyond Daggett comes from Bakersfield—is delivered to us at Daggett by the Santa Fe Company.

Commissioner LANE. Delivered to you by the Santa Fe Company?

WITNESS. Yes, sir, at Daggett.

Commissioner LANE. That is all.

Q. When you first opened your line, Mr. Clark, what did you do for equipment?

A. We had provided equipment, a reasonable amount of equipment, for the opening of the line.

Q. Do you remember how many freight cars you had?

A. We ordered at one time 750—from the time we had purchased this local line here?

Q. Yes.

A. We have been buying some equipment right along. I don't know. I could not give you the detailed number of freight
1107 cars. But prior to the time we opened the through line we had placed an order and had delivered, if I remember aright, 750 box cars, 750 coal cars, about 200 stock cars, and 50 odd new engines.

Q. How many?

A. About 50, I think, 50 odd.

Q. What arrangement, if any, did you have with the Short Line or the Union Pacific, or the Southern Pacific, as to equipment?

A. None, to my knowledge.

Q. None whatever?

A. None whatever, no, sir.

Q. Have you ever had any?

A. No, sir.

Q. Had no arrangement whatever with them?

A. Except that if we got short we would try to hire something from somebody, and we do try to hire from anybody that we can get it from. We have at different times hired engines from the Short Line.

Q. You have at different times—you say you have done what?

A. We have hired engines from the Short Line, and they have hired engines from us.

Q. Have you more engines than you need for your business at present?

A. We have not.

Q. Are not some of your engines loaned to the Short Line at the present time?

A. Not to my knowledge.

Q. Haven't they six of your engines now in use?

A. Not to my knowledge.

Q. You don't know anything about it?

A. No, sir.

Q. If that has been done, it has not been done with your approval?

A. That is done through the general manager.

Q. What arrangement have you made for refrigerator cars?

A. We made a contract with the Armour Company.

Q. How many cars did that include?

A. A maximum of 3,000, I believe.

1108 Q. 3,000 cars?

A. Yes, sir.

Q. When did you make that contract?

A. Some time prior to the opening of the line. I don't remember the exact date.

Q. How long did it run?

A. It is still in existence.

Q. Is it subject to be terminated at any time, or does it run for a specific period?

A. I think it runs for a specific period, which, if I remember correctly, is three years.

Q. Three years?

A. Yes, sir.

Q. And that will carry it over to 1908?

A. Over to 1908, yes, sir.

Q. Have you a copy of that contract in your office here? You have it, I suppose?

A. I can get a copy of it, if it is necessary.

Q. If you will be kind enough to let us have that to-morrow morning, Mr. Clark, if you please.

A. I will do so, yes, sir.

Q. And that contract—have you been familiar with these Armour car line contracts?

A. I was familiar with that contract at the time it was prepared. I don't think I have seen it since.

Q. Was that contract practically the same as the one the Southern Pacific had, except as to the number of cars?

A. I can't say about that.

Q. You did not see the Southern Pacific's contract?

A. No, sir. I have never seen those.

Q. Who made the negotiations with the Armour Company for the contract on behalf of your road?

A. Well, it was taken up by—I don't remember who took it up first; I think my brother had something to do with it, and I had

something to do with it—talked here with their local repre-
1109 sentative, Mr. Graham; and I think Mr. Wells had something to do with it.

Q. Who is Mr. Graham?

A. Mr. Graham is the representative of the Armour Company in Southern California.

Q. Oh, he is the representative of the car lines out here?

A. The car lines, yes.

Q. And you had to do with him in reference to this contract?

A. Yes, sir.

Q. Did this contract become effective immediately after the——

A. (Interrupting.) Immediately on the opening of the line.

Q. Immediately upon the opening of the line?

A. Yes, sir.

Q. And is still in force and is being carried out?

A. Still in force and being observed.

Q. Are you using the full amount of equipment provided for by your contract?

A. I don't think so, but I would not say positively.

Q. In shipments of fruit to the East in the Armour cars, what lines do they ordinarily move over, where your line is the initial line?

A. From Salt Lake?

Q. Yes.

A. They go over both the D. & R. G. and Union Pacific.

Q. Which line takes the most?

A. I can't say at present which. Last year, I believe, the D. & R. G. took the most.

Q. And to what point did the shipments go?

A. What point East?

Q. To what points did they go last year?

A. I can't tell you.

Q. You say you think the D. & R. G. took the most.

A. Yes, sir, that we turned over more fruit to them than we did to the Union Pacific.

Q. And you don't know to what points that fruit was destined?

1110 A. No, sir; I do not.

Commissioner LANE. You have an understanding with the Southern Pacific that it does not take any fruit around by way of Sacramento over the Southern Pacific Company's lines; that is, fruit from Southern California?

WITNESS. No, sir.

Commissioner LANE. You have no understanding whatever?

WITNESS. No, sir.

Commissioner LANE. Do they, as a matter of fact, take much fruit from Southern California that way?

WITNESS. I am unable to answer that.

Commissioner LANE. Is there an understanding or an agreement between yourself and the Southern Pacific by which this territory is in any way divided as to the handling of fruit?

WITNESS. No, sir; absolutely none.

Commissioner LANE. Absolutely none?

WITNESS. No, sir.

Commissioner LANE. How many oranges did you carry last year?

WITNESS. I can't say offhand. Their shipments were rather light along after the orange season commenced, and we were getting a good many shipments; and then we had a bad washout, and we were hung up and out of business for three weeks at one time, and the fruit then, of course, was diverted in other directions.

Commissioner LANE. In competition with whom did you get those oranges?

WITNESS. With the Southern Pacific and the Santa Fe.

Commissioner LANE. With the Southern Pacific and the Santa Fe?

WITNESS. Yes, sir.

1111 Commissioner LANE. You make no difference in the rate between the Southern Pacific, the Santa Fe, and your own line, to Missouri River points, do you?

WITNESS. As I understand it, the rate is the same.

Commissioner LANE. Why do you not put in a lower rate from here to Salt Lake than the rate is from here by way of Sacramento and the Southern Pacific?

WITNESS. On citrus fruits?

Commissioner LANE. Yes.

WITNESS. Well, we believe that the rates on citrus fruits at the time they expect to be moved are low enough—that a very large percentage of the cars that citrus fruits are shipped in return empty, in our case a very large percentage. I don't know what the other companies have found in that direction, but that is the case with us. We feel that the rate is low enough. The service is, as I understand, what the shippers want.

Commissioner LANE. Don't you think you can give a better service because of the shortness of the distance?

WITNESS. Yes, sir. Ordinarily we can, if conditions are good and normal.

Commissioner LANE. Are you not enabled to give a lower rate because of the shortness of the distance?

WITNESS. Well, I don't—put it on a question of hauling per mile, I suppose we could, but the rates are not based upon that, as I understand it, Mr. Lane.

Commissioner LANE. Is there not any other factor, aside from the mileage, that prevents you from making that lower rate?

WITNESS. Not to my knowledge.

1112 Commissioner LANE. If you get a company in which 50 per cent of it is owned by the Union Pacific, and that line in turn owns the line running out to Sacramento and on down to Los Angeles, is it possible for you to make a lower rate by way of Salt Lake City?

WITNESS. I can answer that by saying that we have; when the line was opened we reduced the rates between Los Angeles and Utah common points, and vice versa, quite materially.

Commissioner LANE. But nothing on through business?

WITNESS. No reduction on through business; no.

Q. Then you did not reduce the rates on the great commodity of citrus fruits?

A. No, sir, we did not.

Q. It is not possible for you to reduce a rate, is it, without the consent of the people owning the other half of your stock?

Mr. KELLY. I object to that question.

Mr. SEVERANCE. Is it possible, Mr. Clark?

Mr. KELLY. I object to that question.

Commissioner LANE. That is essentially the question which I myself asked a minute ago.

Mr. KELLY. It is the manner of the statement that I object to.

Mr. SEVERANCE. The manner of the question?

Mr. KELLY. The manner of the statement.

Mr. SEVERANCE. What is it? I will correct it, if you will tell me how you want it put. Or, you put it for me.

Mr. KELLY. Is it not true, Mr. Clark, that you can and do reduce the rates upon your line, in so far as you can control them, without the consent of any of your competitors?

WITNESS. We have done that right along, from time to time.

1113 Mr. KELLY. In respect to all business east of——

WITNESS. It would apply to Colorado points.

Mr. KELLY. Can you or do you raise rates, directing your attention to Colorado points?

WITNESS. Yes, sir; we have done that.

Mr. KELLY. I am asking you for your practice.

WITNESS. Yes, sir.

Mr. KELLY. Now, Mr. Clark, one question—with your permission, Mr. Severance.

Mr. SEVERANCE. Oh, go ahead, yes, Judge; that is all right.

Mr. KELLY. It has been said that the distance to Salt Lake is less via your line than via the Sacramento line. To what points is the great mass of the citrus fruits consigned, Missouri River and east, or Utah common points?

WITNESS. Missouri River and east.

Mr. KELLY. What other line is there that takes citrus fruits to that market, Colorado common points, Missouri River common points, and east of that?

WITNESS. Other than the Southern Pacific?

Mr. KELLY. Yes, other than the Southern Pacific.

WITNESS. The Santa Fe.

Mr. KELLY. Now, taking the Union Pacific and the Santa Fe, or the Union Pacific and your line from here to Missouri River and to Chicago and points east, what is the difference in distance as compared with the Santa Fe?

WITNESS. I think really about 40 miles; along there.

Mr. KELLY. Taking your line, the D. & R. G. to Missouri River points and to Colorado common points, and to Missouri River points, and to Chicago and the East, which is the shorter line as compared with the Santa Fe?

1114 WITNESS. Why, the Santa Fe is the shortest.

Mr. KELLY. And your line via the line just suggested, by the D. & R. G., is something like 150 miles longer than the Santa Fe?

WITNESS. Longer, yes.

Mr. KELLY. Than the Santa Fe?

WITNESS. Than the Santa Fe; yes, sir.

Mr. KELLY. You have lines for the carriage of citrus fruits through Salt Lake, via the D. & R. G. and the Union Pacific?

WITNESS. We have.

Mr. KELLY. That is all.

Mr. SEVERANCE. Is that all, Judge?

Mr. KELLY. Yes, that is all, I say.

Q. Now, to revert to my question that I was asking you at the time Judge Kelly commenced to examine you. If you have on your Board, Mr. Bancroft, and he is the general manager of the Short Line and also of a certain portion of the Southern Pacific and the Union Pacific, and yourself, and you two gentlemen constitute the special committee to whom the general manager reports, will you explain how it is possible, without the consent of your coadjutor, Mr. Bancroft, for your subordinates, who report to you, to reduce rates?

A. That is very possible.

Q. That is quite possible.

A. Neither Mr. Bancroft nor myself knows very much about what is done in rates, unless it be something very special.

Q. Oh, I see.

A. The traffic department work this out and report to the general manager.

Q. So that what you mean, then, is that this can be done without your knowledge?

A. Yes, sir.

1115 Q. And without the knowledge of Mr. Bancroft?

A. Yes, sir.

Commissioner LANE. Who would know about it?

WITNESS. The traffic department and general manager.

Commissioner LANE. That is, your traffic department is headed by Mr. Wells.

WITNESS. By Mr. Wann.

Commissioner LANE. I should say Mr. Wann.

WITNESS. Yes, sir.

Commissioner LANE. And Mr. Wells is your general manager?

WITNESS. Yes, sir.

Commissioner LANE. Would your executive committee know anything about it?

WITNESS. No, sir.

Commissioner LANE. Then this matter of the making of rates would be turned over to the employees there?

WITNESS. Worked out by the traffic department, in connection with the general manager.

Q. Then, I understand that, so far as the matter of producing revenue for the maintenance of your line is concerned, or the matter of the transportation of commodities, neither the executive committee nor the special committee have anything to do with it?

A. Know very much about it; no.

Q. So that if Mr. Wells sees fit to cut the rate to any extent, substantially, he can do it and you don't know anything about it?

A. He could do it; yes.

Q. What is the advantage of having Mr. Wells report to you, Mr. Clark, if you don't know anything about what he is doing?

Mr. KELLY. Now, Mr. Severance——

Mr. SEVERANCE (continuing). About rates, I will say.

1116 Mr. DUNNE. That is a very proper amendment.

A. If Mr. Wells reported everything that he had to do or did do, to the special committee, it would keep him very busy. If he wants to spend any more, or make any improvements, he asks permission from the special committee.

Q. Then, as I understand this organization of the Salt Lake Road, it is this: That when it comes to the spending of any money, Mr. Wells is to report to you?

A. Yes, sir.

Q. But when it comes to putting into effect rates from which you get your revenue, he does as he pleases?

A. Practically so. If he doesn't get results——

Q. (Interrupting.) So that none of his superiors have anything to say about how much the road shall earn, but only about how much shall be spent?

A. Well, we know in time whether we are getting results, or not.

Q. And that is all?

A. If not, we think there is something wrong.

Commissioner LANE. Do you know whether Mr. Stubbs really makes the rates through Mr. Wells or not?

WITNESS. He has nothing to do with it.

Commissioner LANE. You don't know, do you?

WITNESS. I do.

Commissioner LANE. How do you know that?

WITNESS. He has nothing whatever to do with the rates of the Salt Lake road.

Commissioner LANE. But how do you know that?

Mr. DUNNE. Speak a little louder, Mr. Clark.

WITNESS. Ask the question again, please?

Commissioner LANE. How do you know, Mr. Clark, that

1117 Mr. Stubbs does not suggest to Mr. Wells what the rates shall be? Those matters are not reported to you, you know nothing

about the traffic arrangements, or how the rates are made, or when they are made? So how do you know that Mr. Stubbs, the general traffic director of the Southern Pacific system, does not suggest to Mr. Wells just what rates shall be made, and make them to suit himself?

WITNESS. Well, I think if that is the case, I should know it.

Commissioner LANE. How would you find out? Would Mr. Stubbs tell you?

WITNESS. Mr. Stubbs has nothing whatever to do with our organization.

Commissioner LANE. He has something to do with the Union Pacific or Southern Pacific organization?

WITNESS. I understand so, yes, but Mr. Wells would take no instructions whatever from Mr. Stubbs.

Commissioner LANE. How long since you have ceased connections with Mr. Stubbs? You entered into these negotiations preliminary to the contract with Mr. Stubbs.

WITNESS. But he was representing one interest and we were representing another.

Commissioner LANE. And those interests each have fifty per cent. in your railroad to-day?

WITNESS. Yes, sir.

Commissioner LANE. Why should you spurn interference on the part of Mr. Stubbs now—or, rather, why should you spurn as interference any such action on the part of Mr. Stubbs now?

1118 WITNESS. It was agreed that we would have an organization of our own, that was to carry on this corporation.

Commissioner LANE. You do not know anything, as a matter of fact, as to how the rates are made on that road, do you?

WITNESS. Not in detail, no; except what comes to my knowledge from time to time, when I have occasion to look them up. Mr. Gillett, while he was there, if he wanted to make a rate on apples from Colorado common points to Los Angeles, would not ask my permission as a matter of course.

Commisisoner LANE. Whose permission would he ask?

WITNESS. The general manager's.

Commissioner LANE. And the general manager reports to you and to Mr. Bancroft?

WITNESS. He reports to us, yes; but I don't know that he would report any rate that we were to put in. He might some of them, if there was anything extraordinary, or a special rate, or something of that kind.

Mr. KELLY. Mr. Clark, did Mr. Wells, in his handling of rate matters, so far as he does handle them, conceal anything from you? Does he do so?

WITNESS. Oh, no; absolutely nothing; we talk about it.

Mr. KELLY. You consult frequently in respect to the business of the whole company with him?

WITNESS. Every day almost.

Mr. KELLY. And from time to time, are rate subjects pending between you and Mr. Wells?

WITNESS. They have been discussed; yes, sir.

Mr. KELLY. You keep in general touch with him in respect to the rate situation generally?

1119 WITNESS. On the rates and the entire business.

Mr. KELLY. As I understand you, Mr. Wells has certain authority by which he can do things in respect to the making of rates higher or lower, or handling a rate subject.

WITNESS. He is in charge of the property.

Mr. KELLY. But you do not think that Mr. Wells may arbitrarily change conditions so that the revenues of the company would be arbitrarily reduced without a conference?

WITNESS. Oh, no; no, I don't want the gentlemen to get that impression.

Mr. KELLY. In other words, while Mr. Wells is in charge of the subject, he is in charge of the details of it—that is what you refer to, is it not? The general principles and general propositions he consults with you about, and of course he would be governed by the directions of the special committee?

WITNESS. Yes, sir. I see Mr. Wells every day, and sometimes two or three times a day, to discuss matters with him.

Mr. SEVERANCE. Judge Kelly has suggested to you the functions of Mr. Wells and his powers. Let me ask you if Mr. Wells has any power to override the traffic agreement between the Union Pacific and the Salt Lake Company, as to the rates which your contract says shall be made by Mr. Stubbs or under his directions?

Mr. KELLY. I beg pardon. That assumes something that I think is not in evidence.

Mr. SEVERANCE. Yes, it is in evidence.

Mr. DUNNE. I submit, your Honor, that that is a totally unfair question and a captious question.

Mr. SEVERANCE. Just change it, Mr. Dunne.

1120 Commissioner LANE. You can divide it into two questions, Mr. Severance.

Mr. SEVERANCE. Mr. Dunne, see if this is satisfactory.

Mr. DUNNE. You satisfy the Commissioner, Mr. Severance. He has the last word.

Mr. SEVERANCE. How is that?

Mr. DUNNE. Satisfy the Commissioner. He has the last word.

Commissioner LANE. Proceed and ask your question.

Q. Mr. Clark, you stated in answer to Judge Kelly quite fully, I believe, by "yes" or "no," as to the functions of Mr. Wells as far as rate making is concerned.

A. Yes, sir.

Q. Does his authority include the right to make any rates in contravention of those traffic contracts to which I have called your attention?

A. It is not the intention of our company to violate any agreement that we have ever made.

Q. No. Then, assuming for the sake of the question, that Mr. Stubbs is in charge of the traffic of the Union Pacific, and that certain rates are to be made, as stated in the contracts by the Union Pacific. Mr. Wells would have no authority to change those rates upon your lines, would he?

A. Not without the consent of the parties at interest in the contract.

Q. Not without the consent of the Union Pacific traffic people—would he?

A. That is, rates that affect the other lines?

Q. Yes, those through rates.

A. Through rates?

Q. Yes.

A. Yes, sir, they would have to be a party to it.

Commissioner LANE. That is true as to local rates also, is it not?

1121 Mr. SEVERANCE. I was going to ask that question. That is, as to traffic competitive with the Southern Pacific, local traffic, Mr. Wells' authority would not go to the extent of making a rate that was not assented to by the Southern Pacific, would it?

Mr. KELLY. I object to that. That is construction. Let the contract speak for itself.

Mr. SEVERANCE. Judge Kelly has had the witness state, or rather has stated and had Mr. Clark assent, to the various definitions of Mr. Wells' authority.

Mr. KELLY. Oh, no; there is nothing from which that can be deduced.

Commissioner LANE. As I understand it, Mr. Severance is trying to get the construction that Mr. Clark has placed upon this contract, and the operating construction of the contract, and he wants to know now whether Mr. Wells gives any construction to this contract which conflicts with the theory and the explanation of the contract as given by Mr. Clark.

Mr. KELLY. I am perfectly willing that any specific fact may be inquired into. But neither Mr. Clark nor any other person has the right to change the terms of that contract by construction. Let them ask what has been done. Those things which have been done by the parties constitute a construction of the contract. But it is a pretty difficult proposition to put a witness on the stand and say "Construe this agreement for me." That is a difficult proposition.

Commissioner LANE. It is a difficult proposition for the witness to say whether Mr. Wells is authorized to put in any rates which,

1122 under the contract, or under this theory of the contract, which Mr. Severance advanced, Mr. Stubbs might have the power to put in?

Mr. KELLY. Yes, that is wrong, and if you will permit me, it is irrelevant and immaterial, and I can show why. If the witness is asked if Mr. Wells, under his authority, may put in a rate in viola-

tion of this contract, he may say "yes" or "no," as the fact may be. But when it comes to stating a construction or theory of that contract which he advances, different from the contract itself, and then ask the witness whether Mr. Wells may or may not put that in, is an entirely different thing. A question as to what the contract is, how the contract can be construed, can be answered by what the parties actually do in respect to it, or by what one of the parties does under it. But it is not fair to the witness to state to him a hypothetical case and then ask him as to whether or not this or that may be done. That is probing far beyond the conduct of business or the right of the witness himself to answer for. He has no authority to speak for his principals to that extent.

Mr. SEVERANCE. You are getting far afield, Judge. You mistook my question.

Mr. KELLY. If I understood you correct, this all merely goes to the proposition that I don't want this witness to pass upon a hypothetical matter of that kind.

Mr. SEVERANCE. This is not a hypothetical matter or question.

Commissioner LANE. I understand he is asking directly as to the question upon which he answered this morning and said that certain local rates under their agreement were to be put in by the Union Pacific. Is that right, Mr. Severance?

Mr. SEVERANCE. That is right, your Honor.

1123 Mr. KELLY. There is no testimony in the record, and I certainly did not understand the witness to say, that the Union Pacific had any right whatever to name any local rate on his road in Utah or anywhere else.

Mr. SEVERANCE. The Southern Pacific?

Commissioner LANE. The Southern Pacific, yes.

Mr. KELLY. The Southern Pacific—this contract calls for the Union Pacific to make certain rates on business to and from Utah points, and in that respect there is no difference in this contract from the ordinary and general practice of every railroad in the United States. The initial line, the line having the original haul, or rather the line having the long haul makes the rate on——

Mr. SEVERANCE (interrupting). Judge, right in that connection, excuse me if I interrupt you. It is the rule that the initial line has the right to make the rate and that is the universal rule—that the initial line has the right to make it. Let me call your attention to this language.

Mr. KELLY. I know the language of the contract.

Mr. SEVERANCE. Let us see if you do. I don't believe you do, or you would not say that. Because this gives the Union Pacific the right to make the rates both ways, whether it is the initial line, or whether the San Pedro line is the initial line. Do you know that it says that?

Mr. KELLY. I know what it reads. When you get a controversy between the Southern Pacific and the Union Pacific in respect to what that means, and to the making of those rates, then I will answer.

Commissioner LANE. That contest is not very likely, is it,
1124 between the Southern Pacific and the Union Pacific?

Mr. KELLY. Well, I don't know anything about that. We have had no sharper conflicts than those between the Union Pacific and the Southern Pacific right now.

Commissioner LANE. I would like to get an interpretation of it without waiting for any such a controversy.

Mr. KELLY. Those contests and controversies are constantly occurring.

Mr. SEVERANCE. Let me read this again, because I have no doubt that my friend, Judge Kelly, who is exceedingly ingenious, will have some explanation to make. He accounts for this clause in the contract by the suggestion that the initial line has the right to make rates. It reads: "It is covenanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and make their through rates between points, that is, in both directions, on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah for business which said Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company." So it is not simply rates as to traffic where the Union Pacific is the initial line, but it is rates both ways, whether the traffic originates on the San Pedro line or on the Union Pacific.

Q. Has Mr. Wells been given authority to make the rates either going to or coming from Utah points on your line, and thence over the Union Pacific or Short Line, or has he assumed to do it
1125 in any case?

A. I can't say that he has or has not.

Q. Has Mr. Wells, in any case, assumed to make any rates different than the rates in force on the Southern Pacific on local business?

A. In southern California?

Q. Local—yes, put it wherever you please.

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir. However, there may have been changes, I don't know.

Q. You say that last year your shipments were light?

A. Very light.

Q. Very light?

A. Yes, sir.

Q. This year your orange shipments have been heavier, have they not?

A. Somewhat heavier, yes. We haven't moved, as I understand, a great many oranges—I don't know how many.

Q. How were your vegetable shipments last year?

A. They were very light.

Q. They are heavier this year, are they not?

A. They are better.

Q. They are considerably heavier, are they not?

A. A good deal heavier.

Q. Did I understand you to say, in answer to the Commissioner, that fruits and vegetables are still moving from Southern California by way of Sacramento?

A. No, sir, I said I did not know.

Q. Oh, you said you did not know about that?

A. Yes, sir.

Q. In answer to a question put to you by the Commissioner a few minutes ago, after you had replied to me that the rates on citrus fruits to Utah common points have not been lessened, you said you regarded the rates as fair, and that the shippers desired good service rather than low rates?

A. I did.

Q. With reference to the route by Sacramento traffic moving
1126 over the line by way of Sacramento goes over a line 500 miles longer than yours to Salt Lake, does it not? That is true, is it not?

A. Something over 400 miles—just about that—between 400 and 500.

Q. How do the grades between here and Ogden by the Sacramento route compare with the grades over your road?

A. I will say they are heavier.

Q. Very much heavier, are they not?

A. Considerably heavier, yes.

Q. That is, via Sacramento is considerably heavier in grades?

A. Yes, sir.

Q. Is it or is it not more expensive to transport traffic over a road with heavy grades?

A. It certainly is.

Q. So that the cost of transportation over your line from here to Salt Lake is, both by reason of the shorter line and the better grades, much less expensive, is it not, than over the Sacramento route?

A. Yes, sir, I should say so.

Q. How are weather conditions over your road as compared with the Sacramento route as a rule?

A. Oh, at this time of year, I should think they are a good deal better than over the Sacramento route.

Q. Now, if this traffic that you are moving, that you are moving this year to a large extent——

Mr. KELLY (interrupting). If your Honor please, and I ask for information, under what possible theory of examination is it necessary or desirable to go into such details as the comparison, for example, of expense of service between the Southern Pacific and the San Pedro, or the Short Line, or the particular movements of the vegetable traffic?

1127 Mr. SEVERANCE. May I answer the question?

Mr. KELLY. I would just like to know if there is any; I want to know.

Mr. SEVERANCE. I will state it, very gladly. The vegetable shipment upon which I was just about to interrogate him, he said had increased largely this year. I think the witness will state, and if he does not other witnesses will, that that was largely through the solicitation and efforts of our old friend Mr. Munroe, who was here from Omaha. Now, the Union Pacific owns the Oregon Short Line. The Oregon Short Line owns one-half the Salt Lake road. The Oregon Short Line owns slightly less than half of the Southern Pacific, according to the records. The route from here to Chicago by the Oregon Short Line—I mean by the Salt Lake route and the Union Pacific and the Short Line, is about 2,300 miles in round figures. The distance by the Southern Pacific El Paso route is 2,400 miles. The distance by Sacramento is about 2,800 or 2,900 miles. The profit to the Union Pacific, which is in control of all of these lines, and especially the Salt Lake and Union Pacific and Oregon Short Line—I mean aside from the general counsel of the Salt Lake Road—otherwise in control—the profit of the Union Pacific on a shipment to Chicago, say, would be made up of the whole of the 1,000 miles haul east of Ogden, and a one-half interest in the haul from here to Ogden. If moved by El Paso, the interest of the Union Pacific is less than a 700-mile haul, while a foreign line, the Rock Island gets the rest of the haul on that line. To transport stuff around by Sacramento is much more expensive, and no greater revenue results to the Union
1128 Pacific. I want to find out that exact situation, and follow that up by showing the efforts made by the Union Pacific under present conditions for its own ultimate profit, why they handle the business, so as to force this vegetable business, if possible, over the Salt Lake road. In a nutshell, that is what I want to show, and why I want to show it.

Mr. KELLY. In other words, the Union Pacific is soliciting business for the San Pedro as against the Southern Pacific. Is that it?

Mr. SEVERANCE. It is, for the reason I have given.

Mr. KELLY. I don't care what the reason is. The fact is what we want.

Mr. SEVERANCE. Yes.

Mr. KELLY. Suppose it does. What of it? What difference does that make?

Commissioner LANE. It might make some difference to the minority stockholders of the Southern Pacific.

Mr. KELLY. I suppose they are not interested in this matter.

Commissioner LANE. Well, I don't know about that. Proceed with the question.

Q. Do you know Mr. John A. Munroe?

A. I do.

Q. How long ago did you last see him?

A. About two months ago.

Q. Whereabouts?

A. In Los Angeles.

Q. He is the freight traffic director, or rather general traffic manager—freight traffic manager.

A. He is the freight traffic manager of the Union Pacific.

Q. Freight traffic manager of the Union Pacific?

A. Yes, sir.

Q. What was his mission here in Los Angeles?

1129 A. Well, I don't know in particular. In a general way he was looking up freight here in the interest of his line, to go over the Salt Lake road also.

Q. To go over the Salt Lake road also?

A. Yes, sir.

Q. And he was calling on the large shippers here, was he not, to induce them to make shipments over that route, the route made up of your line and the Union Pacific?

A. I understand he called on some of them, but I don't know personally.

Q. And as the result of that, a considerable amount of traffic went that way, did it not?

A. Well, I can't say that it did or did not. Perhaps it did.

Q. There is at least a coincidence between the fact that your traffic has increased and Mr. Munroe's visit here? That is true, is it not?

A. That is true.

Q. Upon what line of road does that traffic originate? Take the celery traffic, for instance.

A. The celery traffic originates on the Southern Pacific.

Q. How do you get it?

A. They deliver it to us in Los Angeles.

Q. The Southern Pacific deliver to you in Los Angeles?

A. Yes, sir.

Q. Can you give an estimate, sir, of the amount of that business that is moved over your line, business originating on the Southern Pacific that is moved over your line and the Southern Pacific since Mr. Munroe's visit here?

A. I cannot.

Q. Mr. Wells could probably give us those figures.

A. Yes, sir; the traffic department or Mr. Wells can give you

1130 those figures.

Q. Where does the fruit moving on your road originate?

A. Some of it originates on our own line, and some on the Southern Pacific, and some on the Santa Fe.

Q. Where does the largest percentage of it originate?

A. The Southern Pacific and the Santa Fe tracks reach a very much larger percentage—I will say reach a very large percentage of the citrus fruits in Southern California. The percentage reached by our own line is much smaller.

Q. I understand. How many packing houses are there on your line exclusively?

A. I should say about twelve.

Q. How many packing houses are there altogether on the three lines in Southern California?

A. I can't tell you that.

Q. Can you give me an idea of the percentage of the total represented by those twelve on your line?

A. Oh, I don't suppose we have over—perhaps not five per cent of it?

Q. Five per cent of it?

A. Less than that.

Q. Less than that?

A. Yes, sir.

Q. How do you get the citrus fruit shipments from those other lines?

A. We solicit for it.

Q. Where is that fruit delivered to you?

A. At different connections. We have a connection at Colton.

Q. Colton, you say?

A. Yes, I think most of the fruit is turned over at—I am not sure of all the delivery points, however.

Q. Yes, I understand. From which do you get the bulk of your fruit shipments, the Santa Fe or the Southern Pacific. I mean now, Mr. Clark, outside of those that originate on your own tracks.

1131 A. I can't answer that.

Q. I would have to get that from the traffic department.

A. Yes, sir.

Q. What percentage of the fruit cars that go out from Los Angeles and vicinity are hauled back here empty? Could you testify as to that, or shall I get that from the traffic department?

A. I would rather you would get that from the traffic department.

Q. You said that last year you thought the larger part of your fruit shipments went east over the Rio Grande. How is that this year?

A. I can't say how it is this year.

Q. The traffic people would know about that?

A. They would know about that.

Q. But last year your fruit shipments were very small, anyway, were they not?

A. They were very small compared with the total amount of fruit that went out from Southern California.

Q. Do you know the amount in number of cars?

A. No, sir; I do not.

Q. Do you happen to know, Mr. Clark, about the division of the through rate, how you figure out the percentages on your line and the Union Pacific?

A. Only in a general way. I am not capable of giving you that exactly.

Q. You would prefer that I get that from your traffic department?

A. I prefer that you get that from the traffic department.

Q. Outside of the Armour cars which you use in fruit shipments, you have testified that you have box cars, coal cars, and flat cars, I believe, of your own?

A. Flat cars, stock cars—flats, flat cars—box cars, coal cars, stock cars and flat cars.

1132 Q. Mr. Clark, it has already appeared in the testimony in this case that the Southern Pacific, the Union Pacific, and the Oregon Short Line, as well as the Oregon Railway & Navigation Company, have an arrangement with each other, a special arrangement, for the interchange of equipment, that is, cars?

A. Yes, sir.

Q. Does that embrace your line?

A. I think so—the general manager can tell you more about that, but I think we interchange cars with the Short Line at Salt Lake and also the Rio Grande. That is, if a car is loaded from the East, say for Los Angeles, it goes through without transfer.

Q. That is not what I mean. It appears that there is an arrangement existing between the Oregon Railway & Navigation Company, the Oregon Short Line, the Union Pacific, and the Southern Pacific, by which the cars belonging to these respective companies are treated as at home on any of the lines?

A. That does not apply to us.

Q. That is what I wanted to know. I thought it did not, but I wanted to find out.

A. No, sir, it does not.

Q. That does not apply to your line?

A. It does not. We have hired—I will show you the reason why that should have been thought of. Last year we exchanged with the Short Line, probably 200 cars. We borrowed 200 of their ballast cars, and loaned them an equal number of other cars, that is, coal cars, and so on, to take their place.

Q. How did you account to each other, and how do you do so? Do you pay a certain per diem, or how do you do it?

A. I don't know whether it was on a per diem or an exchange.

Q. Would Mr. Wells know about that?

A. Yes, sir, I think he would.

1133 Mr. KELLY. It was during the time of your reconstruction work when you had to have ballast cars, and you loaned them as many as you took ballast cars, to take the place of those ballast cars.

WITNESS. Yes, sir.

Q. I want to find out whether this clearing house arrangement belonged to your company as well.

A. It does not belong to our line.

Q. I understood it did not, but I wanted to be sure about it. Have you any steamship connections at San Pedro, Mr. Clark?

A. We have not.

Q. There is no line of steamers here that connects——

A. (Interrupting.) Except the coastwise steamers, I should say.

Q. Except the coast steamers. There is no line of steamers plying between San Pedro and the Orient?

A. No regular line of steamers. We had an Oriental ship in there several months ago, but that is, I think, the only one that has been here—the only one to my knowledge, or as far as I have had anything to do with it.

Q. That would be a tramp ship?

A. That would be a tramp ship; yes, sir.

Q. You have no line established as a connection with yours, or otherwise?

A. We have not.

Q. Does your line participate in any trans-Pacific traffic at all?

A. Not to my knowledge.

Q. That all moves by San Francisco?

A. That all moves by San Francisco.

Q. When you first started trains over your road, how were your fruit trains run as to speed compared with what they are now?

1134 A. They were not very good at that time. Our road was probably open for business before it was a proper time, and our water stations were not all completed and we had a lot of work trains on the line riprapping, ballasting, taking out light rails and putting in heavy, and had that condition existing for many months after we opened the line for through business.

Q. That is, it is your recollection, Mr. Clark, that you made slower time in through shipments at that time than you do now?

A. I think so. That is my impression.

Q. Are you familiar with the traffic?

A. I was at that time when we were opening the road to through traffic—in a general way, yes.

Q. Is it not the fact, Mr. Clark (let me refresh your recollection there), that for a short time you ran trains through to Chicago in connection with the Union Pacific or the Rio Grande, one or the other, in five and a half or six days, fruit shipments?

A. That was not on the opening of the line.

Q. How long after that was it?

A. The line opened in May, and that was, if I remember correctly, the following January, a year ago this last January.

Q. How long did you keep that up?

A. I don't know; not very many trips, I think.

Q. Why did you abandon it?

A. We were not in condition to make that kind of time.

Q. You made it, did you not?

A. Oh, we made it, yes, but it was expensive and dangerous.

Q. How is that?

A. It was expensive and dangerous. We had a good deal of rebuilding to do up in Utah at that time and we had a lot

1135 of light rails that we have taken out since, sixty-pound rails, and a little 52-pound rails, I think, which have been taken out since.

Q. Have you finished that rebuilding?

A. Not entirely.

Q. Practically?

A. No, I can't say practically.

Q. Have you made any effort to re-establish that time in fruit shipments?

A. No, sir—that is, not to my knowledge.

Q. Who directed the discontinuance of that fast service?

A. The general manager, I think.

Q. Was that one of the matters in which he consulted the special committee, or did he do that on his own motion?

A. I think he did that on his own account.

Q. Do you recollect whether that was done pursuant to any suggestions made by any one else?

A. No, sir, I do not.

Q. You don't know about that?

A. I don't know about that.

Q. Mr. Wells would know?

A. He will know, yes.

Q. What is your time now through to Chicago on fruit shipments? Do you know?

A. No, sir, I can't tell you.

Q. What is the present capital stock of your road?

A. $25,000,000.

Q. That stock is evenly divided, is it not, between the Oregon Short Line Railroad Company on the one hand, and yourself and associates, that is, the old Terminal Company on the other?

A. Well, I don't know definitely about the Short Line; the stock, I think, was divided equally between W. A. Clark and E. H. Harriman, and deposited with the Farmers Loan & Trust Company.

Q. Yes, they deposited it, but it has already appeared in the testimony that Mr. Harriman, so far as he was concerned, held half of that stock for the Oregon Short Line. Did you not know that?

1136

A. No, sir, not at that time.

Q. But you know it now, do you not?

A. No, sir, except as I have seen it in the report of the Short Line—that they put it in among their assets.

Q. And that stock which appears there as deposited by William A. Clark is stock owned by William A. Clark, yourself and all the other gentlemen that you have referred to as "our people"—I think that is the term.

A. Yes, sir, that one-half belongs to my brother and his associates, which would include some of our St. Louis friends, myself, and some others.

Q. And the other half to the Harriman people?

A. To the Harriman people, yes.

J. ROSS CLARK

recalled:

Cross-examination by Mr. KELLY:

Q. Mr. Clark, in your examination yesterday, you spoke about the Salt Lake road having put in force from Los Angeles to Utah common points certain rates. Can you state what those rates were before the opening of the Salt Lake line, and what rates the Salt Lake line put into Utah common points, and whether they have been maintained from that time forward, or changed?

A. I can furnish a sheet showing the rates that were in force before the opening of the Salt Lake road and the present rates.

Q. The difference between the rates which prevailed from Los Angeles to Utah common points prior to the opening of the Salt Lake road and the rates you first put in in reaching that
1137 point, are something like 61 or 62 cents a hundred on first class, and the classes below graded accordingly.

A. About 60 cents, yes, sir.

Q. About 60 cents?

A. Yes, sir.

Q. These rates applied to Los Angeles and to Southern California, did they?

A. They did.

Q. Then later has a reduction in like rates again been made by the Salt Lake road?

A. Yes, sir, to be effective, as I was informed by the traffic department, and according to the sheet, on March 2nd.

Q. And how much of a reduction is that, stating the difference between the first class again?

A. This sheet will give it.

Q. About 18 cents a hundred, is it?

A. About 18 cents a hundred, yes, sir.

Mr. KELLY. I will just offer this sheet, which shows the rates as they were originally, and as they have been changed since.

WITNESS. And as they are to-day.

Mr. KELLY. And as they are to-day, or will be when the new tariff filed with the Commission becomes operative.

The paper here referred to (being Exhibit No. 2 to J. Ross Clark's Los Angeles testimony) was marked Defendant San Pedro, Los Angeles Railroad Co. and W. A. Clark's Exhibit 4. Said exhibit is as follows:

1138 SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD CO. AND W. A. CLARK'S EXHIBIT 1. (Clark.)

Form 3082. 5m-11-05-B.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD.

Traffic department.

Class rates between Los Angeles and Utah common points.

		Classes.									
		1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Previous to May 1st, 1905.	Eastbound..	232½	198½	170	144½	116	111	100	91½	89½	71½
	Westbound..	247½	209½	175½	146½	121½	112½	99	89	81½	71½
May 1st, 1905, to March 2, 1907.	Eastbound..	172½	150	127½	107	88½	84	70	64	59	46½
	Westbound..	187½	161	134	109	94	82½	69	61½	54	46½
Effective March 2, 1907..	Eastbound..	151	131	115	96	79½	79½	62	56	38	31½
	Westbound..	187½	161	134	109	94	82½	69	61½	54	46½

W. F. L., Feb. 6, 1907.
T. M. S., Feb. 6, 1907.

1139 Mr. KELLA. That is all, Mr. Clark.

Mr. SEVERANCE. I would like to ask Mr. Clark just one or two questions in connection with these reductions.

Commissioner LANE. Proceed.

By Mr. SEVERANCE:

Q. Mr. Clark, these are reductions on class rates, are they not?

A. And commodity rates.

Q. Where do you see any commodity rates noted there? I see only "Class rates" mentioned.

A. The first five of them—yes, they are all class rates.

Q. They are all class rates?

A. Yes, sir, you are right.

Q. And the traffic moving on class rates is not a large traffic, is it, the traffic moving from here to Salt Lake common points and Utah common points?

A. I should say it is, outside of first class. There is not a great deal of that, but beyond that, I should say there is a good deal of traffic.

Q. Can you give an idea of the percentage of your total earnings that is produced from the class shipments?

A. I cannot, no, sir.

Q. Is it not a fact that your commodity rates, covering things like citrus fruits, and things like that, contain the bulk of your revenue, the revenue of your road?

A. I should say it is larger than the class rate.

Q. Are these class rates that you put in force when your line was opened, May 1, 1905, the same rates that prevailed by the Southern Pacific from San Francisco to Utah common points?

A. I understand so, yes, sir.

Q. They are just the same, are they?

A. I understand they are just the same, yes, sir.

Q. The citrus fruit rate, however, was not cut down, was it?

A. It was not disturbed.

Q. Not disturbed. When did you decide upon this new schedule of rates which is to become effective the 2nd of March?

A. Not a great while ago.

Q. About when?

A. Well, within 30 days, I should say.

1140 Q. Within a week?

A. No, sir. The new rate has been published and is effective March 2nd.

Q. That is to be 30 days?

A. That is to be 30 days.

Q. How long before the 2nd of February, or rather the 3d of February, did you decide upon that reduction?

A. I can't answer that question. The General Traffic Manager has charge of that.

Q. Did the Southern Pacific at the same time make a similar reduction from San Francisco?

A. I understand they have some time ago made a similar reduction.

Q. Oh, they have? You are following in their wake.

A. They put in a new rate and reduced the rates first.

Q. And you are following in their footsteps?

A. We have to, if we expect to get any of that business.

Q. How long ago did they put in that new rate?

A. I can't tell you when it was effective; some little time ago, as I understand.

Q. Do they have in the same class rate that you have, by way of Sacramento to Utah common points from Los Angeles?

A. As I understand—what is your question?

Q. Do the Southern Pacific maintain the same class rates that you do from Los Angeles to Utah common points by way of Sacramento?

A. I understand not.

Q. No, they do not. They have not reduced their rates, have they, from Los Angeles to Utah common points since you put in the schedule of May 1st, 1905, unless they have done it very recently?

A. I am afraid they have on some commodities; not on the classes.

Q. I mean on the classes?

A. I understand not, on the classes.

1141 Q. So that the Southern Pacific has seen fit to retire from the Utah business, so far as class business is concerned?

A. Physical conditions practically compel them to do so.

Q. Some conditions compel them to, anyway?

A. Yes, sir.

Q. So the Southern Pacific are not competitors of the Salt Lake road for Utah common points traffic from Los Angeles?

A. I should say they are.

Q. How are they, if their rates are higher than yours and their line 500 miles longer?

A. I don't know that they get any business.

Q. That is, you mean that their rails are still there?

A. Yes, sir.

Q. But if their line is 500 miles longer, and their rates are higher, they are not very energetic competitors, are they?

A. They are not likely to get much of it, and it is not expected that they would.

Q. So that the situation is that the Harriman lines have decided to let the Salt Lake, of which they own half the stock, do the business from Los Angeles to Utah common points?

A. No understanding, no.

Q. And not interfere with it by sending anything around by Sacramento?

A. No understanding.

Q. Well, but from their actions: you said yesterday certain things were to be inferred from their actions. Is that another case of the same kind?

A. That won't apply to this.

Q. Oh, all right. That is all.

Mr. KELLY. Something was said a short time ago about shortness of motive power, Mr. Clark. Have any steps ever been
1142 taken by the management of the Salt Lake road to remedy that? I will just ask you to state briefly what you have done by way of getting new motive power, and the delivery thereof.

WITNESS. We have a contract with the Baldwin Locomotive Works for 32 new engines. Five of them are on the way now, and have been shipped within a week or ten days, and seven more of them will be shipped early this month some time, and the balance will come on later.

Mr. SEVERANCE. Is it your intention to reinstate that six-day citrus-fruit service, when this new power comes?

WITNESS. No, Mr. Severance.

Mr. KELLY. Why not?

WITNESS. Because it is too expensive.

Mr. KELLY. Before Mr. Clark leaves the stand, I desire to offer a sheet showing the members of the Board of Directors of the San Pedro line on July 1, 1903, in accordance with a request that has been made of Mr. Clark. That will be Clark's Exhibit No. 3.

The paper above referred to was marked Complainant's Exhibit 79 (Clark) (being Clark's Exhibit No. 3, Los Angeles testimony),

the same was offered in evidence in this case by Mr. Severance, and is as follows:

COMPLAINANT'S EXHIBIT 79. (Clark.)

Members of Board of Directors San Pedro Co., July 1, 1903: W. A. Clark, J. Ross Clark, R. C. Kerens, Thomas Kearns, T. E. Gibbon, Reed Smoot, W. S. McCormick, E. W. Clark, R. W. Smith, F. K. Rule, E. O. Leech, T. F. Miller.

1143 Mr. SEVERANCE. I next offer, pursuant to stipulation, the testimony given by T. E. Gibbon, a witness before the Interstate Commerce Commission, who testified on the 8th day of February, 1907, at the city of Los Angeles, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Gibbon were upon the stand giving the same testimony.

Mr. LOVETT. Yes.

T. E. GIBBON

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Gibbon, where do you live?

A. In Los Angeles.

Q. What is your profession?

A. I am an attorney at law.

Q. How long have you lived here in Los Angeles?

A. Since 1888.

Q. Have you been connected with the San Pedro, Los Angeles & Salt Lake Railroad Company?

A. Yes, sir.

Q. In what capacities?

A. I drew the corporate instruments for the organization of that company, conducting the legal work for its organization, became one of its directors, its Third Vice-President and General Counsel at the time of its organization, and up to the 1st of December of last year, continued to be connected with it in the capacity of General Counsel.

Q. During what period of time were you Vice-President, Mr. Gibbon?

1144 A. I think from the beginning, from the organization of the company until 1904 or 1905, really I have forgotten which—'5, I believe.

Q. Previous to the organization of the company were you connected with what is spoken of here as the Terminal Company?

A. Yes, sir. I began my connection with the Terminal Company by organizing that company in the sense of preparing corpora-

tion papers, seeing to their filing, etc., on the 1st day of January, 1901. At that time I was made General Attorney of the company, and some years afterwards I was made the only Vice-President that the company had, our President living in St. Louis, and I continued in the capacity of General Attorney of the company and Vice-President of the Company until it was merged into the San Pedro, Los Angeles & Salt Lake Railroad Company.

Mr. KELLY. You said 1901, Mr. Gibbon. You did not mean that?

WITNESS. Oh, 1891, it was organized; yes, 1891, not 1901.

Q. Now, Mr. Gibbon, you were during those years, in charge, that is, as the ranking executive officer of the Terminal Company?

A. Yes, sir; ranking in this city.

Q. I mean in this city; that is what I mean.

A. Yes, sir.

Q. Who was the President of the company?

A. Mr. George B. Leighton, jr., of St. Louis, during the time I was Vice-President.

Q. And who were the other parties interested in the company?

A. Why, a number of gentlemen, principally citizens of St. Louis. Mr. R. C. Kerens had the largest interest. Then Mr. George E. Leighton, the father of the gentleman named a moment ago, I
1145 believe had the second largest interest. Then there was Mr. Charles Clark and Mr. Van Blarcom, Mr. West, Colonel Logan, of Little Rock, Arkansas—Colonel Logan H. Roots, I should say—Mr. Hobart, of St. Louis, and I believe at one time in the inception of the company, Senator Elkins had some interest, which I believe he afterwards disposed of. I could not undertake to name all of them, but I have given you the principal ones.

Q. There was no one connected with that company in those days who was affiliated with what is known as the Harriman system?

A. There was no Harriman system at the time that company was organized.

Q. I mean of the companies that now compose the Harriman system?

A. Yes, sir.

Q. Who?

A. When the Terminal Company was organized, I think on the day, or, if it is prior, shortly prior thereto, Mr. George E. Leighton had been one of the government directors of the Union Pacific.

Q. Representing the Government?

A. Yes, sir; and I presume that company afterwards became a part of what you call the Harriman property.

Q. Any one aside from him?

A. No one; no connection whatever.

Q. Go back so far as you know; there was no one connected with the organization or the construction of the Terminal Line who was interested financially in what are known as the Harriman lines?

A. No, sir; not so far as I have any knowledge.

Q. Now, Mr. Gibbon, was the harbor at San Pedro constructed at that time?

1146 A. No, sir; except a portion of the inner, what is called the inner harbor; the Government began work on that some 21 years ago, I think, and some 7 or 8 years at least, I should say, before the Los Angeles Terminal Railway Company was organized.

Q. What was the first line that was built by the Terminal Company?

A. The first line that was built by the Terminal Company was the line from Los Angeles to San Pedro; but the Terminal Company acquired upon its organization, by consolidation with another company called the Los Angeles Terminal Railway Company and a company called the Los Angeles, Pasadena & Glendale Railway Company, and a company called the Los Angeles & Glendale Railway Company, a line of narrow gauge road running from this city up to Glendale, in the entrance of the San Fernando Valley, about 8 miles, and a line about 10 miles long running from Los Angeles to Pasadena, of standard gauge; and then they proceeded to build what is called the San Pedro line, the main line from Los Angeles to San Pedro.

Q That line from here to San Pedro was operated as an independent line, was it not, until it was absorbed by the Salt Lake Road?

A. Yes, sir.

Q. Will you state in a general way the ownership of the harbor frontage at San Pedro as it was at the time of the organization of the Salt Lake road?

A. When the capitalists who organized and who were interested in the Los Angeles Terminal Railway Company organized that company, or the last company of that name, in January, 1901, they conveyed to that company——

Mr. DUNNE. (Intg.) 1891 you mean, do you not, Mr. Gibbon?

1147 WITNESS (Contg.) Or 1891, I should say, they conveyed to that company a portion of some land they had purchased aligning a portion of the then existing inner harbor of San Pedro, and a considerable portion of what was the proposed extension of that harbor. That land that was conveyed to the Los Angeles Terminal Railway Company, however, commanded a comparatively small portion of that frontage, but they also vested the title to the remainder of this land, some 1,300 acres, I think, in a subsidiary company called the Los Angeles Terminal Land Company, which was organized as the complementary company of the Terminal Railway Company, to handle the land propositions that might grow out of the railroad.

Q. Now, Mr. Gibbon, what proportion of the harbor frontage down there was controlled by these two companies?

A. Why, I would find it rather difficult to give you the percentage, probably, of the harbor as it was divided at that time. You will understand that at the time these companies were organized, the inner

harbor had been developed by excavation, which was the method of developing it for, well, I should say, on a guess, which might be some distance from accurate, from a half to three-quarters of a mile from the entrance of the harbor. A large portion of that area—that is, the northern portion of it—was not aligned up in private ownership at all, but by a stone dyke or a breakwater which had been built to make the channel there. Then the private ownership of land began, of the land at the point of land acquired by this railroad there that I am telling you about.

Q. Yes.

1148 A. So that I should say the holdings of the railroad extended then up the northern side for, oh, a few hundred yards—it could not have been, by any possibility, I think, over a quarter of a mile, and the remainder of the land was vested—oh, no, it was not that much, it was very little—I don't believe, come to think about it now, that there was over 200 yards of water frontage which was owned by the Los Angeles Terminal Railway Company, the remainder of it being vested in the Los Angeles Terminal Land Company, and that was in the——

Q. And who owned the balance of the frontage there?

A. Why, all the frontage of the north side, the side on which that railroad was——

Q. (Intg.) I mean of the developed harbor, Mr. Gibbon.

A. Well, the Southern Pacific had 3,000 feet on the south side, the San Pedro side, on which is the town of San Pedro, in the form of wharves, to which it had originally obtained title, or at least the right of occupancy, by wharf franchises, and which I believe it afterwards obtained title to in the form of tide land grants, or something of that kind, directly from the State. Then there was another portion of that area, to the north of that, owned by the San Pedro Lumber Company, and I think the Perry Mill & Lumber Company owned a portion of it, the Pacific Coast Steamship Company had a holding there also, and I believe that that, as near as I can now recall, exhausted the holdings.

Q. Now, Mr. Gibbon, the work of excavating and building that harbor continued, did it not?

1149 A. To some extent, yes, sir—to the carrying out of what was called the turning basin project, which contemplated the extension of the improved area of the inner harbor northward, or westward, rather, I suppose, it is more west than north, oh, several hundred yards farther than it was when this road was organized—when the Terminal road was organized.

Q. After that time, did the Terminal road, or the Terminal Land Company, or the successor of those companies, the Salt Lake Road, acquire any additional harbor frontage down there?

A. No additional harbor frontage that was not already controlled by the Los Angeles Terminal Land Company.

Q. That is what I mean.

A. The land that had been vested in the Los Angeles Terminal Land Company, upon the organization of the Los Angeles Terminal Railway Company, and the purchase by it of the properties of the St. Louis people, the Terminal Railway Company and the Terminal Land Company, became vested in the San Pedro, Los Angeles & Salt Lake Railroad Company.

Q. And aside from that, it has no holdings there?

A. What has no holdings there?

Q. The Salt Lake road.

A. None at all.

Q. Did the Southern Pacific add to its holdings there at all?

A. I believe by the acquisition of some land extending easterly from its 3,000 foot wharf frontage, a place called Tim's Point, which I believe it acquired some two or three years ago, extending towards the entrance of the harbor.

Q. Were there docks constructed by either one of the companies there, Mr. Gibbon?

A. Do you mean in the sense of wharves?

1150 Q. Yes,—docks or wharves.

A. Oh, yes. Our company obtained a franchise for, I think, a thousand feet, and afterwards obtained control of some additional; I suppose that it has something between two and three thousand feet there now.

Q. Has the Southern Pacific Company any docks there?

A. That company occupies the 3,000 feet that I have already mentioned a few moments ago, which it originally acquired under a wharf franchise from the County of Los Angeles, and whether it has constructed any wharves in front of this Tim's Point acquisition, or not, I am not advised at this time.

Q. But they have wharves in front of their holdings to the extent of 3,000 feet there, I understand you?

A. They have wharves on the strip of 3,000 feet, which was originally covered by this wharf franchise that I have mentioned.

Q. What lines of boats reach the harbor of San Pedro, if you know, Mr. Gibbon?

A. The only line of regular freight and passenger steamers is the Pacific Coast Steamship Company. There are other lines of lumber steamers and lumber schooners, both steam and sail, which ply there, the names of the owners of which I would not be able to give you. I could furnish them to you, but not at this moment.

Q. They are private lines in a way, in the sense of private lines or boats bringing down lumber from the north?

A. Well, some of them are, I presume. Some of them are private lines in the sense of belonging to lumber companies, and others

1151 are lines which would be, I suppose, called common carriers, because I think they are in the business of transporting lumber without being the owners of the lumber yards.

Q. You say the only regular line of boats to San Pedro is the Pacific Coast Steamship Company. They come from Puget Sound points, do they not?

A. North and South. They ply from San Diego to San Francisco, and beyond, I believe.

Q. The Pacific Mail Steamship Company does not touch there?

A. They do not, so far as I know.

Q. And never have?

A. Beyond an occasional boat, I think not, sir. At least my information does not serve me that way.

Q. There is no line of boats crossing the Pacific making its terminus at San Pedro?

A. No, sir; no regular line. There have been one or two tramp boats, I believe, that have made the trip from San Pedro; but very few.

Q. Has the Salt Lake Road any joint rates with any steamship line?

A. That I could not say.

Q. You do not know as to that?

A. No, sir.

Q. I did not know but what that might have come within your observation. You say it has not?

A. The traffic department would have to tell you that; I cannot.

Q. How is that?

A. I say the traffic department would have to tell you that; I cannot; I do not know.

Q. Now, coming down to the organization of the Salt Lake road. If I understand you, you incorporated that company?

A. In the sense of doing the legal work, yes, sir.

Q. And became its vice-president—one of its vice-presidents?

A. Yes, sir.

1152 Q. Down to what time did you continue to be vice-president?

A. I think it was November, 1904 or '5; '5, possibly.

Q. Who succeeded you?

A. Sir?

Q. Who succeeded you?

A. There was no successor elected to that position. I will say that the duties of the vice-president were vested in the general manager—of the third vice-president were vested in the general manager, and the position was not filled afterwards. The fact is, the third vice-presidency was a sort of arrangement for the construction of the road and getting it under way, and later on it was rather a fifth wheel of the organization, and it was abolished.

Q. So that you occupied that position during the construction, did you?

A. During the construction; yes, sir.

Q. Did you also incorporate the Empire Construction Company?

A. I drew the articles for that company; yes, sir.

Q. Do you recall, sir, whether at any time the Salt Lake Company advertised for bids for the construction of its line?

A. You mean for the total construction?

Q. Yes.

A. Oh, I don't now recall that they ever did.

Q. Let me refresh your recollection. The Empire Construction Company took the contract, did it not, to build the line?

A. No, sir. The Empire Construction Company was originally organized as the financing company, and with the possibility of holding the construction contract, the contract for constructing the line. But that was never carried out, that plan.

Q. What company did hold the construction contract?

A. So far as I remember, none.

1153 Q. Were there no construction contracts made with anybody?

A. I don't recall. I remember distinctly that the functions of the Empire Company were abandoned, and that there was no other company took its place.

Q. Mr. Wells suggests that you did not understand my question. The question is whether there were any contracts let for construction work on the road.

A. Oh, there were numerous contracts let, in the sense of constructing different portions of the line, yes.

Q. To whom were they let?

A. Oh, I could not give you the names——

Q. (Intg.) Who were they, just small contractors?

A. (Contg.)——of all the contractors, but they were let for sections of the line. I think the Utah Construction Company did considerable work for us, and what was the name of that company that Mr. Norton was interested in?

Mr. CLARK. John H. Norton & Company.

WITNESS. John H. Norton & Company did considerable work; and, in fact, there were several contractors engaged on the line from the first to last, I believe, Mr. Severance.

Q. Mr. Gibbon, did not the Salt Lake Road advertise for bids to build the line from Salt Lake City to Riverside?

A. As a whole?

Q. Yes.

A. I think not, sir. I have no recollection of it.

Q. Did they not advertise for bids for the construction of that line in sections?

A. Why, I am sure I can't tell you what the engineer did. That was in the engineering department, and whether he adver-

1154 tised for bids, or sent out notice to responsible parties, or how he got the notification out that they desired bids, I can't say.

Q. But, irrespective of the methods, did not the company request tenders in some way, either by advertisement or by personal com-

munication or letter, for the construction of the whole line, either as a whole or in sections?

A. All that I can say is that I am under the impression that the engineer did send out invitations to construction companies. But I have no absolute knowledge of that.

Q. Who was the engineer?

A. For a portion of the time, the engineer was Mr. Hawgood.

Q. Where is he now?

A. He is in the city of Los Angeles. Later, Mr. Tilden.

Q. And where is he?

A. He is in the city of Los Angeles also. He is our chief engineer at the present time.

Q. You spoke of Utah Construction Company. Did they ever have a contract for the construction of the portion of the line in Utah?

A. I believe they did some work in Utah. Whether they did—the line was, of course, constructed in Utah when we purchased it.

Q. But as I understand it there was——

A. (Intg.) There was some reconstruction work done there.

Q. I understand that. But previous to the time you made those joint contracts, did the Utah Construction Company have a contract to build lines in Utah?

A. I could not say.

Q. You don't know about that?

A. The engineering department would have to give you that information. I don't know.

1155 Q. Do you know who the parties were in the Utah Construction Company?

A. No, sir, I do not.

Q. Did you have to do with the preparation or the approval of the contracts with that company?

A. I did with the approval of the contracts, yes, naturally.

Q. But you do not recall what portion of the road they covered?

A. No, sir, I do not. It is a routine matter that I did not charge my mind with.

Q. It is now your recollection is it, Mr. Gibbon, that the Empire Company dropped out of the scheme, and had nothing to do with the construction of the road?

A. With the final construction of it, yes, sir.

Q. Did it build any of the lines?

A. Well, there were some purchases of material, and matters of that sort, carried on in the name of the Empire Construction Company at first, and contracts made, but that was only, I believe, for some work done in California: I think that did not extend beyond this state.

Q. This contract made between Mr. Clark and Mr. Harriman, Exhibit No. 53, Alexander Millar, recites, among other things, that the Empire Construction Company, of the State of Utah, is an

organization for the purpose of providing for the financing, construction, and equipment of the railroad of said San Pedro Company, with a capital stock of $1,000,000 divided into shares of $100 each, par value, all of which capital stock has been subscribed for and has been fully paid up and issued. That is correct, is it?

A. Yes, sir.

Q. Outside of this contract—I observe that it is said here
1156 in this contract that the assets of said Empire Company consist of claims against and contracts with the said San Pedro Company for money advanced, work done, and material furnished on account of the improvement and acquirement of railroad property for said San Pedro Company.

A. Yes, sir. I will say in that behalf, that the Empire Company, I know, furnished the railroad with considerable money that was expended in right of way in California, and I believe it also made contracts for the material that was used in the construction (certainly a large portion of it), in the construction work between here and Riverside.

Q. But the company did not take the contract for the construction of any of the line, as you recall it, and sublet it to these contractors who built the line in sections?

A. Just what the *modus operandi* was with reference to that, I am unable to say at the present time. I know that the company did do considerable financing in the way of advancing money for the work done, and the right of way and other property acquired in Southern California; but I am quite sure its financing never extended beyond Southern California, and that it was practically retired, as far as being an active factor in the construction of the road is concerned, before we entered upon the work in Nevada or Utah.

Q. Now, Mr. Gibbon, are you able to testify from your recollection as to the extent of work that was done in laying out the line of your company, prior to the time of this contract of July 9, 1902, between Mr. Clark and Mr. Harriman?

A. No, sir. What I would say about that would be of the
1157 most general character. I could say that we had laid out our line in Southern California, and a good deal of it had been built, I think. It had not been completed, I am quite sure. We had done some surveying and acquired some rights of way in Nevada, and I am quite sure there had been surveying done in Utah. But to what extent that went, you would have to learn from the departments charged with that particular work.

Q. Do you remember that surveyors started out from Salt Lake City to survey this country?

A. There had been some surveying done from Salt Lake City westward, I am quite sure, before that contract was ever executed.

Q. It appears from the testimony of Mr. Clark—however, just a moment, I will strike that out. Will you state, Mr. Gibbon, whether at the time you organized this company, and for some time thereafter, it was the intention of the gentlemen interested in the property

to build an independent line from Salt Lake to Los Angeles. By "independent," I mean a line that was not affiliated with any of the transcontinental systems, in the sense of being tied up with them in any way?

A. I can't answer that, except that I might probably answer it by saying that I am not aware that the parties who undertook to build the line had any definite plan as to affiliating with any line, although there had been, these people had, through myself and others, approached the people in control of what would be their connecting lines, before that time, before the matter was finally floated, with the idea of what connections might be made for the company, and so forth.

1158 Q. Yes.

A. That had never extended to any idea of community of ownership or anything of that kind.

Q. That is what I mean. You had approached the Gould people as well as the other people?

A. Not the Gould people. If you will remember, at the time we organized, the Rio Grande Western was an independent ownership, and I had had myself personally some interviews with General Palmer, whom I happened to know, about connections, and so forth.

Q. But it was not contemplated, was it, at that time, that there would be any division of ownership between your people and the Union Pacific, so far as the San Pedro line is concerned?

A. Well, there was certainly no definite plans to that effect; no. But it may have been contemplated by any of the individuals—of course I don't know as to that.

Q. That would be in the minds of the individuals. But there was nothing of that kind talked over?

A. No, sir.

Q. Or considered in your meetings?

A. Nothing at all.

Q. Now, Mr. Gibbon, it appears from the testimony of Mr. Clark yesterday that there were certain difficulties met with when you got up to what was called the Meadow Valley Wash. I assume that, as counsel, you must have had some connection with those matters?

A. Yes, sir; I did—rather.

Q. Will you state briefly, Mr. Gibbon, just what the trouble was there, and what happened, and all about it?

A. A good many years ago, before we undertook this matter, a subsidiary company of the Union Pacific, or representing or certainly backed by Union Pacific interests, had undertaken the exten-

1159 sion of the lines connected with that company through Nevada, and I believe with the idea of eventually coming to Southern California. They had gone as far there, I believe, as constructing a track to the Nevada-California State line, in the sense of laying the steel on it, and preparing it to be operated, and had constructed a roadway——

Q. (Intg.) Just a moment there, Mr. Gibbon. Can you tell me when that track was laid?

A. No, sir, I cannot, but it was not very long either way from the time that our Los Angeles Terminal Railway Company was organized, because that company was organized at that time with the understanding with the then management of the Southern Pacific that it should become the terminal at San Pedro of a—I mean the Union Pacific—of the Union Pacific line.

Q. That was before my friend Judge Kelly piloted the Union Pacific through the receivership proceedings?

A. It was about that time that this line was constructed that I am speaking of now, leading down into Nevada and from the California-Nevada State line for some distance a roadbed had been constructed and a number of tunnels had been made. The Meadow Valley Wash is what I suppose in railroad construction would be called, in railroad parlance, a strategic position for any line of railroad desiring to build through from Salt Lake City to Southern California, and naturally we wanted to occupy that position, and——

Q. (Intg.) Permit me to interrupt you again.

A. Yes, sir.

Q. You stated something about some grading having been done and some tunnels constructed?

A. Yes, sir.

Q. Were those constructed back in the old times—1891?

1160 A. Along a little before or a little after 1891—yes, 1890 and 1891—in the late 80's or the early 90's.

Q. Had anything been done with that grade prior to the time your Salt Lake road was projected?

A. In the sense of occupying it or using it, do you mean?

Q. Yes.

A. Not that I am aware of; it was lying there unoccupied, certainly, when we undertook the building of the road.

Q. Yes, sir. Now go ahead. Proceed with the history of the Meadow Valley Wash.

A. About the time or shortly after we organized our company, just how long after I am not able to say now without consulting data——

Q. (Intg.) By "our company" you mean the Salt Lake Company?

A. Yes, the Salt Lake Company, usually called the San Pedro Company. (Contg.) ——the Oregon Short Line Company undertook, I believe, to occupy that grade. Whether that company—I believe at that time the Oregon Short Line people, or the people who were connected with that road, had not organized the company which they very shortly afterwards organized, called the Utah, Nevada & California Railroad Company, of Nevada, but about that time, possibly shortly afterwards, that company was organized and later I think everything was conducted in the name of that company. It became a race as to who should be possessed of that grade and these tunnels, and also the right of way which had previously been sur-

veyed and made out and located by this subsidiary company of the Union Pacific interests, some 10 or 11 years ago?

Mr. KELLY. The Oregon Short Line & San Francisco Rail-
1161 way Company was the name of that company, was it not?

WITNESS. Yes, sir; was the name of the old company.

Q. Mr. Gibbon, this activity on the part of the Oregon Short Line in the organization of a new company did not take place until after your company had been organized, and it was matter of public notoriety that you proposed to build through to Salt Lake?

A. Yes, sir.

Q. What next occurred, Mr. Gibbon? You say it became a race between the two companies as to which should get possession of that right of way. What form did that race take?

A. Well, that right of way had been sold for taxes by the county. We secured the tax title, to give us some right over it. Then the Oregon Short Line, or their subsidiary companies, secured what rights remained, if any, in the company that originally located a right of way, not merely the constructed roadway, but the survey through the Meadow Valley Wash. We secured some right of way from private parties. In fact, either side secured anything in the nature of legal rights that would give them any claim upon that strategic position. We were in there with our construction forces, and they went in there with theirs. We came very near to having some bloodshed, and there were some clashes that might have been very serious, but they were not, fortunately, so far as the loss of life is concerned. Finally each side got into court, and each side got the other tied up on injunctions, so that neither one should construct a line or obtain any advantage in the way of constructing a line there. Judge Kelly got us pretty well tied up, representing the other interests, and we got them in pretty nearly the same
1162 fix, as far as going on with the work was concerned, and it seemed that we each one had reached a point where neither could do any work there or accomplish anything.

Commissioner LANE. At that time, Mr. Gibbon, how many miles of road did you have built down from Salt Lake City?

WITNESS. None.

Commissioner LANE. And from Los Angeles towards Salt Lake City, how much did you have built?

WITNESS. We were building the line towards Riverside at that time, sir—the San Pedro Company.

Commissioner LANE. How many miles did the Oregon Short Line have from Salt Lake City down towards the Meadow Valley Wash?

WITNESS. Oh, I suppose, main line and branches, nearly 500 miles.

Q. What they had had for a number of years?

A. Yes.

Q. Ever since the reorganization?

A. Yes, sir.

Mr. DUNNE. Mr. Severance, will you allow me to interrupt you and ask him a question there?

Mr. SEVERANCE. Certainly.

Mr. DUNNE. Had you constructed at this time any line at all outside of the State of California?

WITNESS. I think not; none that I know of. Finally, when we had gotten—if I may go on with the story?

Mr. DUNNE. Yes; do so.

WITNESS. When we had gotten each other pretty well tied up, Judge Kelly and I were present at the argument of one of our numerous law suits which we had reciprocally brought, each against the other, when there came up some preliminary mat-
1163 ter in Salt Lake City, during the argument one day, and while our co-counsel were occupying the attention of the court the judge and I were chatting, and I suggested to him that if we succeeded in securing a prior right through this Meadow Valley Wash, I was perfectly willing to admit that, under the United States law with reference to the occupancy of canyons or valleys of that kind, gorges, that they could force a way through there, and that I believed that he would concede that if his people succeeded in getting the prior right we could force a way through, the only thing being that the road that had the prior right would probably be crossed so many times by the other road going through that it would make it very difficult and dangerous for each side to operate through there; and, assuming that they wanted to build, and knowing, as I did, that we wanted to build, it seemed to me, from a sensible point of view, that we had better try to get our people together and put through a joint corps of engineers to work in the building of the lines and getting the best possible location for two lines, so as to avoid a multiplicity of crossings, which, in a very treacherous place like that, would naturally be for one line to take a definite location and the other line to take what was left. We agreed that we would recommend that to our respective lines, and we did so, and there was a kind of protocol drawn up which took the form finally of a written stipulation, which was filed in the United States Court at Carson City, Nevada, where these cases were pending, as I recall now, which provided for the entrance in this Meadow Valley Wash of a joint surveying party who were to locate the two lines, and
1164 that joint surveying party did enter upon their work. Just how far it was prosecuted I don't remember, but I know they did a very considerable amount of surveying and location work, and located the two lines through there, or did a great deal of work in that direction. Pending, however, the final conclusion of that work and the vesting of the title in each of the contesting companies' interests, the arrangement was made which resulted finally in the joining of the two interests in the building of the one line of road.

Q. At the time that Judge Kelly and yourself had that conference at Salt Lake City, which resulted in this stipulation, it was still the intention of your people to build a line through from Salt Lake?

A. So far as I can recollect, and I should say it undoubtedly was.

Q. And so far as you are advised, or were advised at the time, it was claimed by the other interests that they were going to build a line through?

A. Yes, sir; and we were led to believe from various things we saw that they meant to do it.

Q. And it would have resulted, if you had not made this arrangement of an amicable passage through this canyon, and there had been no amalgamation—it would have resulted, in that event, in two lines of road through?

A. Yes, sir; it would have resulted in two lines of road. That is correct. And through a country that could not maintain one.

Q. So far as the local business of the line is concerned?

A. So far as the local business of the line is concerned, it could not maintain one; no, sir.

Q. Was it contemplated by your people when you inaugu-
1165 rated the scheme of building the San Pedro road that the through business or the local business would be the main dependence of the company, as to its income?

A. We expected that the through business would be the main dependence. But at that time we expected, of course, to have through business from the eastern lines, the Rio Grande Western and the Union Pacific.

Q. Now, Mr. Gibbon, do you know who initiated this contract, or negotiated the transactions that led to the making of the contract of July 9, 1902?

A. In the sense of knowing what individual first suggested it to the other, I do not; no, sir.

Q. Where was it done? Was it done here, or was it done in the east?

A. I think it is one of those mutual things that arise sometimes between people that are—that it was an outgrowth, undoubtedly, of this negotiation with reference to running the two lines through, as I have said.

Q. Through that valley, you mean?

A. Yes; through that valley, because, as the parties in interest met and talked over the thing, so far as my knowledge served me, and I was very intimately connected with that matter at that time, it was a sort of mutual coming together of the minds of both sets of people, both interests; that they would better serve the interests of each by joining and building one line of road than to go on and build two lines, as they were doing.

Q. Was that a unanimous feeling on the part of your people?

A. Why, so far as I know; absolutely unanimous.

Q. No difference of opinion among your people regarding that?

A. No, sir. In the course of the discussion there was this:
1166 It was very earnestly discussed by our people, if we had to accept a close ally at Salt Lake City, as we undoubtedly apparently did, and for this reason, because it was perfectly apparent

to us, and to anybody it seems to me, that knows anything about railroading, that if we built that line, any interests that were interested in the Southern Pacific would have to build a line for the protection of the business that had been going before that time through the Sacramento gateway for Southern California: and the question with us was whether we would rather have the Denver & Rio Grande and the Rio Grande Western—and by the way, it had all become the Denver & Rio Grande at that time because Mr. Gould had purchased the Rio Grande Western and had control of both of them between the time we organized our company and the time this agreement was made—it became a very interesting matter with us, I say, as to which we would take if we had to take an exclusive ally with our people, and they finally decided, in discussing the matter, that the Union Pacific had more to offer them than the other route, on account of the superiority of the Union Pacific as a traffic line through the middle west.

Q. Yes. Well, then, when you initiated the road, however, you expected, as you have said, to have had two connections?

A. We had hoped for that, yes, sir.

Q. Yes. And it was only after the——

A. (Interrupting.) Permit me to interrupt you. I merely related that with reference to considering those two matters in answer to your question as to whether our people were all agreed on this arrangement finally. They were, so far as I know, unanimous.

1167 Q. My last question was: At the time you initiated the road, you expected to have the two connections; that is, you hoped to have them?

A. Yes, sir.

Q. You did not learn that you would be compelled to make your connections solely with the Rio Grande, or work solely with the Rio Grande, until the Oregon Short Line had waked up and commenced to try to get possession of this old grade, did you?

A. Well, we probably did not have the matter brought to our attention, that what we had hoped would be a connection would probably be a rival.

Q. A rival?

A. Yes, sir.

Q. I examined Mr. Clark rather in detail, Mr. Gibbon, with reference to the various terms of this contract as finally made. Who drew that contract? Do you know? Which person drew it—the Clark and Harriman contract?

A. That contract was drawn, in the sense of the legal work upon it, I think between Judge Kelly and myself.

Q. Whereabouts?

A. Principally in New York City, I think.

Mr. DUNNE. You mean the contract of July 9, 1902?

Mr. SEVERANCE. Yes, the contract of July 9, 1902. Q. During how many months did the negotiations proceed before that contract was drawn?

A. That is July 9, 1902, is it not?

Q. Yes.

A. Oh, it must have been a period of several months. Without refreshing my memory I could not give it to you. From the time we had agreed upon this truce and putting our engineers in the field jointly and until July 9, 1902, negotiations were pending more or less during that time leading up to this agreement.

1168 Q. You say that Judge Kelly and yourself drew that agreement. Judge Kelly at that time was the counsel of the Union Pacific, was he not?

A. Yes, sir.

Q. And you say that the contract was drawn, so far as drawing it is concerned, by Judge Kelly and yourself. Who were the parties who conducted the negotiations as to what should be put into the contract?

A. I think the details were worked out largely, as I recall, by Mr. Ross Clark on one side and Judge Cornish on the other.

Mr. KELLY. And Mr. Stubbs?

WITNESS. Well, Mr. Stubbs was there too, I believe. Mr. Stubbs was also present. Then there was a reference to Senator Clark and Mr. Harriman when points were reached which required the decision of principals.

Q. Mr. Stubbs worked out the traffic end of it, did he?

A. Yes, sir; I think so, principally.

Q. I thought it sounded like Mr. Stubbs. Did you gentlemen stay in New York for several months while this was being drawn?

A. We were there for a month or six weeks, I think, at that time. I know it was a number of weeks. It is a matter that was not done in a day, of course, or several days.

Q. Was this contract of July 9, 1892, immediately made public?

A. I beg pardon.

Q. Was the contract of July 9, 1902, immediately made public?

A. I don't think so.

Q. When was the fact that some kind of an arrangement had been made, made public?

A. Just as to the date, I can't say, but some time in the year 1903.

1169 Q. That is, you went on then with the construction work, did you, through Nevada, during that period?

A. I think there was not a great deal of construction work done in Nevada for some time after that contract was made.

Q. I say during the time, but after the contract was made.

A. We finished up the construction work here to Riverside, and there was some work done there. But the work was most actively pushed later on, as I recall.

Q. When was the division of the Board of Directors of the San Pedro Company made, if you recall?

A. Whether that was at the election of 1904 or 1905 I don't recall. It was one or the other of those years.

Q. Was the fact that the Harriman and Clark interests had gotten together made public prior to that time?

A. Prior to the division of board of directors?

Q. Yes.

A. In a general way, yes; oh, yes. I am quite sure that it had become public property before that.

Q. At the time you were inaugurating the road and building the line to Riverside, was it contemplated that you would build this line through from Riverside to a point beyond El Cajon Pass?

A. When we first began?

Q. Yes.

A. Yes, it was contemplated as a possibility, although we had, I believe, among ourselves, discussed the possibility of negotiating trackage arrangements with the Santa Fe for the very obvious reason, of course, that a track over such a place as that is like a bridge, really, in railroading, and there is no——

Q. No local traffic?

A. No local traffic, no; and it would seem a pity to multiply
1170 companies, to build two lines where one might serve.

Whether our head, the head of our company, Senator Clark, or Mr. Ross Clark, his representative, had approached the Santa Fe Company with reference to that, or not, I don't know. But I know that the possibility of making that arrangement was discussed among ourselves.

Q. You do not recall, do you, that any arrangement was attempted with the Santa Fe until after the contract of July 9, 1902?

A. No, sir; I have said that—that I had no knowledge of it.

Q. This contract provides that Harriman, as trustee, will negotiate with the Southern California Railroad Company, and, if possible, obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton, to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow, and then also to negotiate with the Santa Fe Pacific Railway Company, and if possible obtain from said ocmpany the right for the San Pedro Company to use the tracks of the said Santa Fe Pacific Company between Barstow and Ludlow, California. Did Mr. Harriman conduct those negotiations on your behalf for you?

A. I did not have any positive knowledge about that at all. I knew the negotiations were taken up by somebody. The details, however, were worked out by Mr. Wells on the one side and ourselves on the other, later on.

Mr. SEVERANCE. I think that is all.

1171 Comr. LANE. Any questions, gentlemen?

By Mr. KELLY:

Q. Mr. Gibbon, you were present at the examination yesterday?

A. Yes, sir.

Q. And one of the contracts that was made between the San Pedro Company and the Southern Pacific Company was a contract bearing date June 18, 1903?

A. Yes, sir.

Q. Will you kindly look at Article III. of that contract and say whether or not you had anything to do with its drafting?

A. (After examining the article in question.) I did. I represented the San Pedro Company at that time, the original promoters of that company, when this contract was drafted.

Q. If you can, will you explain how the last sentence in that article came to be there? If you can explain it, you may do so.

A. The article, I believe, Judge, is one sentence.

Q. I mean the last phrase of the sentence.

A. Do you mean this portion which says "unless such change may be made necessary in order to meet the rates, charges, classifications or tariffs of any other company or competing line of railroad, or to conform to the final decree or judgment of some court of competent jurisdiction, or some lawful and valid requirement of state or national law?"

Q. Yes, sir. That is the substance of what I mean, relating to that clause.

A. With reference to the state or national law?

Q. Yes, that clause. Just tell how that came to be in there.

A. I think I suggested the addition of those words, for this reason: The whole article it will be noted, provides for, and
1172 the preceding article, article II, to which it refers, provides for local rates. I will say that the word "local" in railroading is used sometimes in a double sense; sometimes it is "local" as to the system—local traffic; and at other times local traffic is given a territorial significance. The term "local traffic" or "local freight," whatever it is, I affirm had a territorial significance here and was intended to refer to Southern California traffic. When this article was suggested, Article III, providing for these rates remaining stationary, you know, without a change, etc., I suggested the adding of this phrase for the reason that, as we all know, sometimes local freight, that is, the rate, what is a local rate, may become complicated with an interstate rate by a shipment in a given locality becoming an interstate shipment; I wanted our company to be in the position, if that should ever arise at any time, not to be forced by this stipulation as to rates to in any way violate a law. Of course, it might never arise. But there are times, of course, when local rates become complicated with interstate rates, as I say, and then I wanted the company to have a clear and full right to so act with reference

to those rates as not to become a violator of law in any way—in other words, to protect itself. That is why that clause was added.

Q. That suggestion, then, originated with you, Mr. Gibbon, as representing the San Pedro Company, did it?

A. As I recollect it now, it did.

Q. And its purpose was to provide against a contract relation which might apparently be in violation of law?

A. Yes, sir.

1173 Q. Either of any legislation then existing or which might thereafter be enacted?

A. Against any insistence upon the maintenance of a local rate which, if maintained, might in any way become complicated with an interstate rate, and thereby subject to the National law.

Mr. DUNNE. It would include the extension of national jurisdiction over interstate traffic, if such a thing occurred during the life of that agreement also, would it not?

WITNESS. Certainly; it would go to the extension of national jurisdiction over any kind of traffic that became amenable to it.

Mr. SEVERANCE. May I interrupt you with one question?

Mr. DUNNE. Certainly.

By Mr. SEVERANCE:

Q. What is there in that article that causes you to refer to California business?

A. May I read the two articles?

Q. You may read the two articles, yes.

A. So as to point it out, Article II reads: "In partial consideration of the said covenants and agreements of the said Southern Company contained in Article I hereof, said San Pedro Company hereby covenants and agrees with said Southern Pacific Company that it will, upon the execution of this agreement, adopt, print, publish and put in force at all points upon its leased, owned or operated railroad, for the handling of local business thereon, the lawful rates, tariffs, classifications, and charges used by said Southern Company for the handling of any local business which may be the subject of competition between them." Of course, the preceding parts of

1174 the contract and the physical facts were such as to make that necessarily confined to traffic in Southern California, because there is the only place where those conditions arose to which it could or did apply.

Q. What about traffic between California and Salt Lake, or Ogden?

A. We would not call that local business.

Q. Would it not be local to the line of the Salt Lake road?

A. No, sir. I don't think so. I don't see where we can have any competitive traffic there.

Q. Did you say, Mr. Gibbon, a few moments ago, that the word "local" might be used as indicating local to the system?

A. Yes, sir.

Q. Or local to the locality?

A. Yes, sir, I did.

Q. Now, the San Pedro Road reaches Utah common points, and it was proposed that it should, and the Southern Pacific by way of Sacramento reaches Utah common points?

A. Yes, sir; but, Mr. Severance, that was not in contemplation. In the first place, we have no lines in Utah, and under our agreement as to construction never will have, that could interfere with the Southern Pacific in local matters—that is, as far as I can possibly see. Article I, however, of the contract——

Q. (Intg.) One question there, Mr. Gibbon. The same rates apply to Ogden and Salt Lake City, do they not, from the coast?

A. From the coast, but they are not local.

Q. I understand. They are local to your line, though?

A. No, oh, no.

1175 Q. You say that a rate from Los Angeles to Salt Lake City is not local to the San Pedro line?

A. Yes, sir, but I am telling you also that the word "local" here is used in a territorial sense.

Q. You say so, but I am asking you if there is anything in the contract that says so.

A. There is this that indicates it very strongly. Section 1, the beginning of the contract, says: "The said Southern Pacific Company undertakes and agrees to and with said San Pedro Company that it will interchange freight traffic in Southern California with said Pedro Company, to and from points south of the parallel of Mojave, California, in like manner and upon as favorable terms and conditions as said Southern Company at the same time interchanges traffic with the Southern California Railway Company, and that in the movement of such traffic, or the charge therefor, under similar circumstances and conditions, it will not discriminate in any respect in favor of any connecting line to the prejudice or disadvantage of said San Pedro Company; but this shall not be construed as forbidding or restraining the said Southern Company from favoring its own lines as against the San Pedro line, that is to say, lines of railroad owned, operated, or controlled by said Southern Company.

"SECTION 2. The Southern Company, in respect of the traffic mentioned in Section 1 of this article, will join with said San Pedro Company and with said Oregon Short Line Railroad Company and said Union Pacific Railroad Company in forming through lines of freight service, and in through rates therefor upon agreed divisions of through rates for such service equal to the facilities, service
1176 and terms accorded by it to said Southern California Company on like kind of traffic.

"ARTICLE 2. In partial consideration of the said covenants and agreements of the said Southern Company contained in Article 1 hereof, said San Pedro Company hereby covenants and agrees with said Southern Company that it will, upon the execution of this agreement, adopt, print, publish, and put in force at all points upon its leased, owned, or operated railroad, for the handling of local business

thereon, the lawful rates, tariffs, classifications, and charges" and so forth. You will notice that at the conclusion of Article I it reads to the Southern California Company purely and simply.

Q. That is the consideration for the agreement in the other article?

A. Yes. If the contract did not make it perfectly plain that that was all intended to make it refer to California, then it was the fault of the lawyers who drew it, because it was the intent of the parties.

Mr. DUNNE. Was that the intent of the parties?

WITNESS. Sir?

Mr. DUNNE. You say that was the intent of the parties?

WITNESS. Yes, sir, unquestionably. Nothing else was considered, for a moment.

Q. That is, you intended to agree that for 99 years you would not charge any higher rate than the Southern Pacific did to Riverside or San Bernardino or Colton or any other place in Southern California which you might reach?

A. Yes, sir. We felt——

Q. (Intg.) But you did not intend to tie yourself up as to points across the line in Nevada, but only to prevent any competition in California?

1177 A. Only in the territory mentioned in section 1 throughout—Southern California south of the parallel of Mojave.

Q. Does it say so?

A. Yes, sir.

Q. Is that used in section 2 or section 3?

A. Section 1.

Q. Oh, no.

A. Not directly, but section 2 refers to section 1, and section 3 to section 2—or rather Article III to Article II.

Q. But it refers to it by saying in consideration of the benefits you get in section 1, you get so and so?

A. Yes, sir.

Q. And then follows the agreement?

A. Yes, sir.

Q. Without any limitation as to whether it applies to California or any other state.

A. Beyond the fact that it says "local," and I think hardly anybody could read the contract over without seeing that the provisions of that contract could not be made to refer to some locality in Utah, or to some locality in Nevada, when the very beginning of the contract gives the locus as Southern California south of Mojave, in which the contract is supposed to operate.

Q. By the way, as a California lawyer, may I ask you if at the time that was made there was any statute in California similar to the Sherman Anti-Trust Law?

A. No, sir, I think not.

Q. There was not?

A. No, sir.

Q. So that combinations are not regarded with disfavor in California, locally?

A. Well, that combination I do not think is inimical to any law on the statute books of our state.

Mr. DUNNE. We have a statute here with reference to contracts in restraint of trade, which is a mere development of the common
1178 law doctrine, and which does not impeach any contract which restrains trade as to any question——

Mr. SEVERANCE. That was in accordance with the construction given in the trans-Missouri case?

Mr. DUNNE. But it was reconstructed in the Northern Securities case.

Mr. SEVERANCE. I am quite familiar with that case.

Mr. DUNNE. Is that all?

Mr. SEVERANCE. I am very glad you referred to it.

Mr. DUNNE. You may be referred to it again before we get through with it.

Mr. SEVERANCE. I think we will. I hope so.

Mr. DUNNE. Is that all, Mr. Severance?

Mr. SEVERANCE. That is all. Excuse me for interrupting, but I thought we might save time by it.

Mr. KELLY. Certainly.

Mr. DUNNE. Mr. Gibbon, at the time that the provision was inserted in this contract for the adoption by the San Pedro line of the Southern Pacific rates upon this local traffic in Southern California south of the parallel of Mojave, was that local traffic at that time itself the subject of competitive struggle between the Santa Fe and the Southern Pacific?

WITNESS. I should say it was.

Mr. KELLY. For all of the territory reached——

By Commissioner LANE:

Q. Was that condition changed, and did it not become no longer a subject of competition between the Southern Pacific and the Santa Fe?

A. I am afraid I do not understand the Commissioner's question. Was it changed, did you ask?

Q. Yes. Mr. Dunne asked you if at that time the traffic
1179 in Southern California was subject to competition between the Southern Pacific and the Santa Fe road?

A. Yes, sir.

Q. You said it was?

A. I said I thought it was. My opinion is based upon the fact that the territory was pretty thoroughly occupied by the branch lines of both of those companies, and they were supposed to be competing companies.

Q. During the history of your road, during the time that you were in connection with the San Pedro road, was that condition in

any way changed as to the Santa Fe and Southern Pacific competing for that traffic?

A. Not that I have any knowledge of.

Q. Was your road in any way a party to any agreement by which the traffic of Southern California was divided as between the Santa Fe, the Southern Pacific and yourselves?

A. Not to my knowledge.

Q. Was any kind of an agreement, any agreement of that kind made, of which you have any knowledge?

A. Not to my knowledge, absolutely.

Q. Was any consideration given to the fact that there was a great volume of trade down here, traffic of that kind, which could be divided in the making of this agreement, or in the making of the other agreements that you made with the Union Pacific and with the Southern Pacific?

A. Yes, sir. In that respect it was given business. We were coming into Southern California with a main line and practically no branches to the points of origin of the most valuable traffic
1180 in Southern California, the citrus fruit traffic and vegetable traffic. We felt that by making that agreement with the Southern Pacific, whereby they agreed to give us the same rates as a connection that they did with any other road—if you will notice the agreement there, that we were, through a company whose lines ramify through all Southern California, to put ourselves in touch with the point of origin of this very valuable freight, without having to wait for the time necessary to build, or to go to the expense of building branch lines to these particular places, and that was the reason the agreement was made. Of course, we considered, with reference to the rates for that privilege that we could very well afford to do that for the company that would give business to us, for the good of being in touch with this valuable traffic.

Q. That would keep you from building roads in Southern California and reaching out for business yourselves?

A. It would keep us, you say—is that it?

Q. Yes. I say it would keep you from building roads in Southern California and reaching out for business there?

A. It would make it possible to get the business.

Q. Without building a road?

A. Yes, sir. Of course, we might build a road if we wanted to. But anyway it gave us a chance, if anybody wanted to ship over our lines whose packing house happened to be along the Southern Pacific lines, to do so, and the Southern Pacific penetrates almost every part of Southern California. It gives us a chance to get that business, because they made that contract to deliver it to us under certain favorable terms.

1181 Mr. DUNNE. Mr. Gibbon, you appreciate, do you not, that in the operation of competing roads, rates will, generally speaking, be equalized? The one railroad meets the rates of the other, does it not?

WITNESS. I know that as a fact in the operation of railroads. I know that is the result.

Mr. DUNNE. In point of fact, Mr. Gibbon, a great deal of undue significance has been given to the subject-matter of competition between railroads in mere rates. Is not the substantial and forceful competition, competition in service and facilities, rates being equated?

WITNESS. Well, I think it is. I am not a railroad expert, and don't pretend to be. But it seems to me that in the business of Southern California, especially the kind of business on shipments that originate here, that service is quite as prime a factor as rates, because it is very important to the successful handling of that business that it get east as soon as possible.

Commissioner LANE. If that is so, do you think that it promotes the most effective and efficient service to have the line between Salt Lake City and Los Angeles controlled by those who have the Union and the Southern Pacific, and the Southern Pacific system? The witness has been asked to volunteer an opinion. I suppose he can give his opinion there.

WITNESS. I have no objection to giving it. I have always felt, if the Commissioner please, that the physical superiority of the line between here and Salt Lake City, and the fact that it connects
1182 with the Union Pacific there, would necessarily command for that line a very large proportion of the traffic originating here, notwithstanding the fact that you may argue that some of the interests connected with the San Pedro line have other interests which you might say could be made opposing interests in the ownership of interests in other lines of road. For this reason, if there is, for instance, actual competition on the part of the Santa Fe, our rate to Salt Lake City furnishes a link in the only road that can compete with that road in handling expeditiously the kind of commerce that is to be handled expeditiously from this country, with the possible exception of the Southern Pacific. But the people whose dual interests are supposed to produce the objectionable result that your Honor spoke about a moment ago, if they ship on the Southern Pacific, get a division of 700 miles as against all the remainder going to a foreign line, if they ship to El Paso and turn it over, for instance, to the Rock Island, whereas if they ship over our line they get a division from the half interest, their interest for the less than 800 miles between here and Salt Lake, and they get all the remainder for the haul by the Union Pacific—and what is the length of the Union Pacific?

Mr. SEVERANCE. A thousand miles.

WITNESS. Suppose we halve 800 miles and you add to that the Union Pacific; that gives us 1,400 miles of haul, practically, whereas they get, if they send it over the El Paso, and by the El Paso gateway, but 700 miles, as I say. I don't pretend to be a railroad expert, but these matters suggested themselves to me as matters of common sense in relation to this matter.

1183 Mr. DUNNE. Mr. Gibbon, you are familiar with the provisions of the Interstate Commerce law, as provided, by which a rate shall not be increased or lowered except upon 30 days' notice?

WITNESS. Yes, sir.

Mr. DUNNE. That notice must be given to the Commission, must it not?

WITNESS. Yes, sir.

Mr. SEVERANCE. I suppose, if I may——

Commissioner LANE. Just a moment. I want to continue this line for a moment.

By Commissioner LANE:

Q. You do not understand, Mr. Gibbon, that the publication that is required by the Interstate Commerce law, the giving of 30 days' notice, in any way deprives a railroad of the right of reducing rates?

A. Of the right to reduce rates?

Q. Yes, sir.

A. Why, my impression is that they had no right to make a change in the rates.

Q. That they have no right to make a change in the rates except upon 30 days' notice?

A. Yes, sir.

Q. But they can, by giving the 30 days' notice?

A. Yes, sir; by giving that notice.

Q. I don't understand that you have answered the question that I put to you. You have got a line from Los Angeles to Salt Lake City?

A. Yes, sir.

Q. In answer to Mr. Dunne, you said the great question in railroading today is not so much the question of rates as it is the question of facilities?

A. Yes, sir.

Q. The question of getting cars and the question of their
1184 prompt movement?

A. Yes, sir.

Q. And the question of the proper handling of the fruit that has to go?

A. Yes, sir.

Q. You spoke also of the Santa Fe road being a competitor of the line between Los Angeles and Salt Lake City?

A. Yes, sir.

Q. And controlling the rates. Would it be better for the people of Southern California, if we are going into matters of opinion, in the way of obtaining facilities, to have another road that would compete with the Southern Pacific, as well as the Santa Fe?

A. Yes, competition, actual competition, in both rates and service, of course—if I understand your question.

Q. Then it would be your judgment that if you could have put through the road from Los Angeles to Salt Lake City without the

combination with the Oregon Short Line, that that would have been a better thing than the combination, not as a railroad proposition, but as a service proposition, because it would have developed competition in the matter of facilities?

A. When I answer that question fully, as I view it—I suppose you want my view simply. Of course, it is only a matter of opinion.

Q. Yes.

A. I would say no. I certainly doubt the possibility of maintaining in a serviceable condition a line of railroad from Los Angeles to Salt Lake City, built and operated as that road would have been built and operated if it had had the competition of another line practically parallel which would have had all of the business of the Union Pacific go to it; I don't believe it could have been maintained in such a position as to have been a factor in the fruit business on this coast.

1185 Q. Then your understanding is, that because the Union Pacific could compel the Oregon Short Line, on its line from Salt Lake City down to Los Angeles, which was projected, to give it all of its California business, that it would not have been advantageous for your road to have built separately?

A. I think the Union Pacific California business is of much more importance than the Oregon Short Line California business.

Q. It was, then, the power of the Union Pacific and the value of that connection which made it impracticable to have two roads from Salt Lake to Los Angeles?

A. I believe it would have been, as a mechanical proposition, impracticable, because the Union Pacific line—it is not necessary for me to suggest to the Commissioner, who has made a study of those things—when it comes to the matter of dispatch of freight and of the mechanical handling of freight, the Union Pacific line is so much superior to any other connection there, that with the Union Pacific line having a fruit line to Southern California, it would have been so thoroughly in control of the fruit situation that it seems to me the other line would not have fared very well, and I doubt if it would have been a serious factor in the transportation situation from here. I know we thought it was better to join in partnership with another interest and get the line through than to submit ourselves to the danger of it.

Q. Was it better for you to have the one connection than it would have been to have had two?

A. But we have two at the present time.

Q. You have two?

A. Yes, sir.

1186 Q. And you have through rates, joint rates, over the Denver & Rio Grande?

A. Yes, sir; just the same as we have over the Union Pacific, I understand.

Q. Was it contemplated by you that you would have connection with the Union Pacific if you ran through from Los Angeles to Salt Lake City, originally, as an independent line?

A. We hoped that we would.

Q. Was there any reason why you would not?

A. No reason that we knew of at that time why we would not. But later on we discovered that the interests of the Union Pacific would require it to have some sort of a connecting line in southern California, or a very considerable interest in that sort of a line.

Commissioner LANE. That is all.

By Mr. SEVERANCE:

Q. Why did its interest require it to have that? It had not had it for all the years the Union Pacific had been built, had it?

A. As to whys and wherefores, I can hardly be expected to answer for them. It was very evident to us, however, that they were going to do it, because they had incorporated all the companies for that purpose, and they were in the field surveying and getting material together, and it was the practical question of what we had to face that we had to deal with.

Q. And they went through the work of incorporating these companies, and put their surveyors in the field, only after you people had started out to build an independent line to Salt Lake City?

A. Yes, sir.

1187 Q. Prior to that time they had been compelled to serve California either through the El Paso gateway or the Sacramento gateway?

A. Yes, sir.

Q. And they had made no move whatever to serve them through a direct line from Salt Lake, or any Utah point thereabouts?

A. No, sir.

Q. So when you said it was necessary, that necessity did not arise until you proposed to build an independent line?

A. Well, the public had no evidence that it had arisen at that time, certainly.

Q. Mr. Dunne a few moments ago asked you a question about the 30-day provision of the interstate commerce law, evidently with the purpose of showing that this contract, to some extent at least, suppressing competition, would be a reasonable thing because of the 30-day provision?

Mr. DUNNE. No, that was not my point at all.

Mr. SEVERANCE. That 30-day provision was not in force at all when those contracts were made, was it?

WITNESS. No, sir.

Commissioner LANE. I think I would like to know just what his point was.

Mr. SEVERANCE. What was your point?

Mr. DUNNE. It was simply to suggest to your Honor that when rates are raised or lowered under the new law, all lines are advised by 30 days' notice, and they meet the rate and the rates are equated, and the forceful proposition is the proposition of service and facilities.

Q. Then I will suggest to you: At the time this contract was
1188 made this situation did not exist, and any line could lower a rate without giving 30 days' notice, could it not?

A. Yes, sir. That is my understanding of the law.

Q. And you understand further than that that our friend Mr. Stubbs, and other traffic men, did lower rates on much less than 30 days' notice, do you not?

A. I presume they did.

Q. And you realize, do you not, that the Southern Pacific line, at the time you entered into these contracts assumed that you would know enough to lower rates on less than 30 days' notice?

A. I suppose so; I suppose the same law that applied to them would apply to us, of course.

Q. Now, another thing. You have suggested that the Union Pacific is your best connection because they are in a position to give better service and quicker service than any of their competitors?

A. Yes, sir.

Q. Is it not a fact that for a short time in the year 1905, the Salt Lake road gave its fast citrus fruit train service to the east?

A. Just what year it put that service on, and the history of it, I don't know.

Q. You recall such a thing, do you not?

A. Yes, sir.

Q. You knew it?

A. Yes, sir.

Q. And is it not a fact that those trains ran east over the Denver & Rio Grande?

A. That I don't know. I don't think so, but, however, I don't know. I am quite sure, as a matter of most elementary knowledge of the physical conditions of railroads, that you cannot make a good service, as good time, over the Denver & Rio Grande, with their
1189 heavy grades, as you can over the Union Pacific with the grades eliminated to a great extent.

Q. I dare say you will agree that the amount of traffic on a road has something to do with the facility of moving trains?

A. Yes, sir.

Q. And you know, do you not, that all the business over the Oregon Short Line, and from the O. R. & N., and all the business coming from the Southern Pacific and San Francisco and going over the Southern Pacific to San Francisco, is poured into the Union Pacific?

A. Yes, sir.

Q. All of that easterly traffic has to be taken over the Union Pacific?

A. Yes, sir.

Q. And you knew also that the Denver & Rio Grande was not a part of the system of which the Union Pacific was a part, did you not?

A. Yes, sir, to be sure. I assume, however, in reference to that, and as to the application of what I said as to fruit shipments from Southern California, that any railroad attempting to handle the citrus fruit trade, for instance, will do it on a preferential schedule which will give that freight the right of way over almost any other freight they have. So, that being the case, the amount of freight on the line would not cut much figure.

Q. Are you aware of the fact that the service has deteriorated to such an extent that, instead of making a six days' trip to Chicago, as you did for a short time, it becomes very often from 10 to 14 days?

A. Well, no, but I presume, like all service now, it is congested on account of the impossibility of their getting motive power to move the freight.

1190 Q. They have sufficient motive power to move citrus fruits, if they are giving them the preference, have they not?

A. That is a question whether they have or not. It is very difficult even to get enough to move their passenger traffic through. It is a most unfortunate condition of affairs with all roads.

Mr. SEVERANCE. That is all.

By Mr. KELLY:

Q. Mr. Gibbon, referring to the contract attached to Mr. Millar's testimony, Exhibit 41, dated June 18, 1903, between the Short Line, the Union Pacific, and the San Pedro road, will you please look at section 6 of article 4 and see whether you had anything to do with the construction of that section, and, if so, you may state the reason for its adoption.

A. (After examining the exhibit.) Yes, sir, I did. I recall very distinctly the discussion which resulted in the adoption of that section.

Mr. SEVERANCE. Would you mind reading that? I don't recall just what it is.

WITNESS. Certainly. "Section 6. It is covenanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah for business which said Short Line Company or said Union Company might give to or receive from said San Pedro Company in competition with all other connections

1191 of said San Pedro Company; provided, however, that, on demand, said Short Line Company and said Union Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business." I might probably answer your question better by giving a little short history of the matter.

Q. That is what I want.

A. I remember very distinctly when Mr. Stubbs proposed this section, leaving out, or which did not have in the latter four lines, be-

ginning with the word "provided," after the ";". We, of course, viewed with some degree of disfavor at first, and as giving rather more control over our line than we thought was proper, the section as it stood. And the argument was this: We are about to sell you 500 miles in all of the system of the Oregon Short Line, which has been of very great value to the remaining part of that system and also to the Union Pacific, in which the interests are identical or largely so, as a feeder for gathering and distributing traffic over our through lines. Now, we don't want to put you in a position, in selling you this line, to make an agreement with somebody else, some other competitor, by which you could use the lines we are turning over to you as a stick to crack our heads with, so to speak. Therefore, if it becomes necessary to protect the traffic and carry it over our lines as against a competitor we want the right to make the rates, to preserve that. We suggested as a complement to that, as reciprocal to that, that they must also add this provision: "Provided, however, That on demand said Short Line Company and said Union Company
1192 shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business," and that, if I may illustrate, works this way: Of course this contract is made for a long time, and we naturally expect a lot of other competing lines to be in that territory before the term of the contract is completed—that is the natural history of railroading everywhere. For instance, it could be used in this way for the protection of the Southern Pacific Company and the Oregon Short Line——

Q. (Intg.) You mean the Union Pacific Company?

A. I mean the Union Pacific and the Oregon Short Line. We ship a lot of wool from Southern California, and it goes over the Rio Grande, to which line we deliver it at Provo. Others go over the Southern Pacific. If the Rio Grande, in order to get all of that wool, were to make a cut in rates, which, however, did not cut our rate, or if we wanted, on account of some promise of reciprocity in traffic, to favor them we could not do that, because the Southern Pacific and the Union Pacific could come in to force us under this stipulation of the contract to adopt a competitive rate which would give them an equal show for that shipment. But conversely, suppose the Rio Grande were moving a lot of valuable freight, moving from Denver to Provo, which is a competitive point between our line and the Rio Grande. Suppose, in order to cut us out of any of that haul that had been coming around by the Union Pacific and been going over our line to Provo, the Denver & Rio Grande were to give them a reduced rate, we could turn around and force the
Union Pacific and the Oregon Short Line to give us a rate
1193 which would protect us against that reduction. And we felt that the thing being mutual in that way—of course we saw considerable force in the argument that these lines turned over to us might be used against the very people selling them to us, and we felt that if there was added to that our right to protect ourselves by

making the rates over their lines on incoming and outgoing competitive business, just as they reserved that right to make rates over our lines, it might be a provision valuable to us at that time, and grow very much more so in the future.

Q. In other words, the rate-making power, discussed yesterday by questions and answers, under this section 6 you understood to have been made reciprocal?

A. I think so, yes. We understood that to be the force of it.

By Commissioner LANE:

Q. How could this road as to Utah ever be used in that way, when half of the stock was owned by your people and half by the Harriman people? They would have a veto upon anything of the kind.

A. How could it ever be used in what way, sir?

Q. In the way of developing competitive business and diverting the business to the Denver & Rio Grande.

A. Well, it seems to me it is proper, for by the Union Pacific and Short Line insisting on putting that in, it appears they had an idea that it might be used in that way sometime—else they would not have tried to safeguard that. However, if the condition was such as the Commissioner supposes, then the section would be useless and would have hurt no one.

1194 Q. But it is subject to another construction. The clause itself is subject to another construction than that one which you gave, is it not?

A. I don't see that it is. What construction is it, sir?

Mr. DUNNE. What construction has your honor in mind?

WITNESS. I was not endeavoring to construe the clause but to give the history of it.

Mr. DUNNE. That is the purpose of it.

Q. That is its purpose?

A. Well, its purpose is what it says, I think, to give them the right if they want to use it for their protection, to name rates over our lines, just as the succeeding clause, beyond any doubt, we feel, because we suggested the wording, gives us the right, if it becomes necessary to our protection, to name rates over their lines, and they must live up to them.

Q. How far would you say your right under that clause to name rates over their lines would go?

A. Just as far as theirs—that they would join us in any rates necessary to protect us from competition. It was intended to have exactly the same scope, and to be entirely reciprocal.

Q. Would that extend—I haven't the clause in front of me—to the Southern Pacific line?

A. Oh, no; simply to the Union Pacific and the Oregon Short Line.

Mr. DUNNE. Would your honor like to see it?

Mr. SEVERENCE. Here is the section.

Comr. LANE. Section 6, I understand, and the Southern
1195 Pacific has nothing to do with that, then. [The Commissioner examines the section.]

Mr. SEVERANCE. May I ask the witness a question, your honor?

Comr. LANE. Yes, sir.

By Mr. SEVERANCE:

Q. Mr. Gibbon, calling your attention again to this section, which his honor has before him, it is a fact, is it not, that under that section the Union Pacific has the right to make all the rates in and out, in connection with your line?

A. On competitive business, yes; they cannot compete with them.

Mr. SEVERANCE. May I take the agreement?

Mr. DUNNE. You take my copy, if you like, Mr. Severance.

WITNESS. It refers to business that could be handled by a competitor.

Q. Here is the way it reads: "It is covenanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah, for business which said Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company."

A. Yes, sir.

Q. Now, they have the right to fix those rates?

A. On competitive business, yes, sir.

1196 Q. That is to say, competitive with connections of the San Pedro Company?

A. With their connections, yes, sir.

Q. Yes, I understand. That gives them the right then, in all that territory, in the first instance, to make the rates—I mean in the territory that is competitive?

A. Yes, sir, as to business in the territory that is competitive.

Q. We will not misunderstand each other. Let us develop just what this section means. Then the rate, irrespective of whether it is satisfactory to you or not, is made by them—they have the right to make these rates, and you are compelled to accept those rates?

A. Yes, sir.

Q. If for reasons of his own, independent of this particular matter; if by reason of traffic in other sections that might be competitive as to some particular industry, Mr. Stubbs is of the opinion that it would be a good thing for the Union Pacific to put in a certain competitive rate over his line and yours, you are compelled to take it, no matter what the considerations are that impel Mr. Stubbs to put in the rate?

A. No, sir, it is qualified.

Q. What is the qualification?

A. It is qualified by this: If he should name a rate there not necessary to protect them from competition, but which would lay us open to competition, I think the provision would give us a right in that connection——

Q. (Intg.) Is there any provision about that?

A. Read on.

Q. I am coming to that in just a minute. The proviso that you say you put in there for the protection of your company,
1197 is simply that on demand they shall join you in any through rates necessary to meet any rates offered by any competing line for said business?

A. Yes, sir.

Q. That is to say, suppose the Rio Grande Western, or any other competitor, should offer a lower rate. That is what that is to cover, is it not?

A. Yes, sir.

Q. To protect you against a competitor offering a lower rate?

A. Yes, sir.

Q. But you have no protection against Mr. Stubbs putting in an unduly low through rate to that territory himself, have you? Suppose the competitor says "No?"

A. Yes, sir, we have this protection.

Q. What is your protection?

A. We have, of course, the protection that every man has against a man doing a thing that would be very poor as a matter of business policy. Under our agreement as to the division of rates, they are bound to allow us as much as we do upon the division of that rate.

Q. But I understand the case that was put a few moments ago—suppose they can secure a large amount of traffic for your system—you know you have a short line of road in Utah, comparatively speaking?

A. Yes, sir.

Q. If, whatever the considerations are that move Mr. Stubbs to do it, or Mr. Munroe, or whoever may put in the rates, they deem it wise for their interest to put in a rate there, you have got to stand it, have you not?

A. Yes, sir, we have got to stand it, unless, as I say——

Q. (Intg.) You have got to stand it in any case, and the
1198 only protection you have is that when some competitor makes a rate, you have a right to have them meet it?

A. Yes, sir.

Q. Otherwise you are completely in their hands; unless a competitor makes a rate that you want to meet, you are absolutely in their hands?

A. If it be supposed that they could carry traffic so much cheaper than we could that they could afford to do a thing of that sort, it might, of course, work a very great hardship upon us, which would,

of course, result in a corresponding benefit to the public, whoever should have the benefit of these rates, and I don't know that the Commission would object to it upon those grounds.

Q. That might be so. The public might benefit in one section and lose in another, because they are not confined to one little single line of track as you are?

Mr. DUNNE. Mr. Gibbon, do you understand that the right of the Oregon Short Line and its connection, the Union Company, to make these rates in and out of Utah, applies except with reference to such business as the Short Line—I am reading from the contract—or the said Union Line might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company?

WITNESS. Oh, no; we limited it with that character of business when we started.

Mr. SEVERANCE. That is understood.

Mr. DUNNE. I do not understand your question that way.

Mr. SEVERANCE. Oh, yes. It is through business.

Mr. DUNNE. It is not only through business, Mr. Severance,
1199 but it is the through business expressed in paragraph 6.

Mr. SEVERANCE. Undoubtedly. Why, certainly. I am quite familiar with that.

WITNESS. However, I don't think we need any more protection than that in any direction.

Mr. SEVERANCE. But the language is unambiguous that they give over the rate-making power to the Union Pacific, except where another line makes a cut——

Mr. DUNNE (Intg.) Mr. Gibbon, you do not understand, do you, that you have given over the rate-making power on through rates to the Union Pacific or the Short Line, except upon business which that company might give to or receive from your company, in competition with any or all other connections of your company?

WITNESS. Absolutely not. That is what the section says.

Comr. LANE. That is, they can make the through rates obtaining on traffic originating in Utah on your road as against the Denver & Rio Grande.

WITNESS. Yes, sir.

Comr. LANE. Or any other road that connects with your road?

WITNESS. Yes, sir. We can do the same thing on their rate as against a rate which the Denver & Rio Grande might make against us.

Q. But you can not do that except to meet a rate put into effect by the Denver & Rio Grande?

A. Yes, sir.

Q. You can not initiate a rate, in other words?

A. No, sir.

Q. You are absolutely tied up, so far as initiating any rates is concerned?

A. Yes, sir.

1200 By Mr. DUNNE:

Q. Mr. Gibbon, you are not tied up so far as initiating rates is concerned, except where the business is competitive, within the limitations of that section?

A. No, sir; there is nothing in that that would prohibit us from making a cut in the rate ourselves; that does not tie us up in that.

Q. Let me put this question to you, Mr. Gibbon: This contract recites that they shall have the power to initiate rates?

A. Yes, sir.

Q. That they shall have the power to initiate rates with reference to a certain kind of business?

A. Yes, sir.

Q. And with your permission I will hark back to the precise words of the contract, " which the Short Line Company or said Union Company, might give to or receive from said San Pedro Company, in competition with any and all other connections of said San Pedro Company."

A. Yes, sir.

Q. That is the competitive business you have in mind?

A. Yes, sir.

Q. Now, let me instance a shipment. Take a shipment of wool originating at Milford, if I am correct that such a shipment would originate at such a point—I take it simply for the purposes of illustration. Milford is a point in Utah, is it not?

A. Yes, sir.

Q. Denver is a point in Colorado?

A. Yes, sir.

Q. A movement of wool from Milford, Utah, to Denver, Colorado, would be an interstate movement?

A. Yes, sir.

Q. Under this contract, you have a connection not only with
1201 the Union Pacific for Denver, but also with the Denver & Rio Grande, have you not?

A. Yes, sir.

Q. So that business might be given to or received by you from either of those two connections?

A. Yes, sir.

Q. Now, if you have a through rate with the Union Pacific on wool originating at Milford and destined to Denver, and the Denver & Rio Grande, for the purpose of taking that business off the rails of the Union Pacific, should come to you and offer to shrink its proportion of the through rate, so that a less through rate would obtain by your connection with them, the Union Pacific would have a right to protect itself, as being your preferred connection, by its making the rate and insisting that you adhere to the rate as made by it?

A. That is my understanding of the scope of the provision.

Q. Now, going around the other way. Provo is a competitive point, is it not, between the Denver & Rio Grande and between the Union Pacific and your line into Provo?

A. Yes, sir.

Q. The Denver & Rio Grande could pick up a shipment at Denver and carry it through to Provo, could it not?

A. On its own rails.

Q. And at its own rate, could it not, Mr. Gibbon?

A. Yes, sir.

Q. That same shipment could move in by the way of the Union Pacific and your line?

A. Yes, sir.

Q. Into Provo?

A. Yes, sir.

Q. You have a through rate with the Union Pacific?

A. Yes, sir.

Q. Suppose that the rate quoted by the Denver & Rio Grande from Denver to Milford is so low relatively to the through
1202 rate that you have with the Union Pacific, that the business moves preferentially along the line of least resistance, by the lower rate?

A. Yes, sir.

Q. Across the line of the Denver & Rio Grande?

A. Yes, sir.

Q. Are you not authorized, under this contract, to go to the Union Pacific and say, "We insist in our turn upon making the through rate from Denver to Provo, so that we can meet the competition of the Denver & Rio Grande?"

A. We so construe that.

Q. And are they not compelled, no matter what the views of my imperial friend, Mr. Stubbs, may be, as he seems to be characterized upon the other side—no matter what his views may be, he would be compelled to yield to your demand, would he not?

A. We supposed that to be the force of the section when we dictated it.

Mr. SEVERANCE. That is very nice. I don't think anybody doubts anything you have brought out, Mr. Dunne.

By Mr. SEVERANCE:

Q. Let me ask you this question, Mr. Gibbon. Under this section, you can not make any cut in a through rate, can you, unless a line competing with the Union Pacific has first made the cut.

A. Why, yes, I don't see why not. Why can't we?

Q. Let us see if you can.

A. If I understand the force of your question——

Q. (Intg.) I don't think you do, or you would not answer it that way. It reads: "It is covenanted and agreed that said Short Line Company and its connections, the said Union Company,
1203 and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah, for business for which said

Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company." Of course, my question applies to this competitive business.

A. Yes, sir.

Q. You have no right to cut that rate unless the conditions obtain that is contained in this section?

A. That is correct.

Q. And then comes the other clause: "provided, however, that on demand, said Short Line Company and said Union Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business."

A. Your idea is, then, that if they had taken the initiative in making a rate, then we have no right to disturb that rate. That is your idea, as I gather?

Q. That is it exactly, Mr. Gibbon.

A. We have no right to disturb it except under the excuse of claim of competition. Is that it?

Q. Yes, by another line.

A. Yes, I think that is true.

Q. So you have no power to make rates at all on that through business that is competitive—as competitive business is defined in that section?

A. Except when it is necessary to protect ourselves.

Q. You are absolutely in the power of Mr. Stubbs, or his sub-
1204 ordinate, so far as making that rate is concerned, until the Rio Grande comes in and makes a cut; until that is done, you have got to hold that rate, and you can not extend a promise to the shipper that if he will go and locate a big industry on your line, you will assure him a low rate to his market, and so build up the business of the company?

A. I suppose in connection with that statement, I might add that it would be impossible for the Union Pacific to execute that power, arbitrarily, that is, to the injury of our line in a lowering of the rates, since they are bound to join in any loss to which we would be subjected, and in the second place, the lowering of rates in such a way would be very gratifying to the public on the lines served.

Q. You have said that before, Mr. Gibbon. That is not a new suggestion. But this is a fact, is it not: That there might arise many contingencies by which it would be for the interests of the Union Pacific, by reason of its vast system, to make rates into your territory which would not be profitable rates taken by themselves?

A. To them?

Q. Yes, certainly. Whereas, by doing that, they might secure large benefits in other quarters. You are helpless against them, are you not, in such an event?

A. Yes, sir, we would be, I presume.

Mr. SEVERANCE. That is all.

WITNESS. But with reference to that particular clause, I confess that I can not conceive of any conditions arising which would justify their doing that, on the ground of getting some advantages
1205 somewhere that would reciprocate to them for those low rates. I can not conceive it. It is a condition of railroading which I can not now imagine.

Mr. DUNNE. No matter how many competitive connections might be made, or how many competitive points might be multiplied, like the analogy I suggested of Provo, you can compel them to make a rate which would enable you to meet that competition?

WITNESS. We think so. That was what the section was intended to accomplish.

Mr. DUNNE. Well, your Honor, we have very nearly reached the hour of 12. Shall we adjourn?

Commissioner LANE. Are you through with the witness?

Mr. SEVERANCE. I think so.

1206 Mr. SEVERANCE. I next offer, pursuant to stipulation, the testimony given by R. E. Wells, a witness before the Interstate Commerce Commission, who testified February 8, 1907, at the City of Los Angeles, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Wells were upon the stand giving the same testimony?

Mr. LOVETT. Yes.

R. E. WELLS

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Wells, where do you live?
A. In Los Angeles.
Q. How long have you lived here?
A. Six years, barring two years that I was in Salt Lake.
Q. What is your business?
A. The railroad business.
Q. How is that?
A. I am general manager of the Salt Lake Railroad.
Q. How long have you occupied that position?
A. Six years.
Q. When you first came to the Salt Lake Railroad, what lines did it have?
A. Simply what was known as the old Terminal line.
Q. And you operated that, did you?
A. Yes, sir.
Q. What is the nature of the traffic that was carried over that line?

A. Lumber, chiefly.

Q. Bringing in lumber from San Pedro to Los Angeles?

A. Yes, sir.

Q. Was there any fruit moved out over that line?

A. Yes, sir.

1207 Q. Going to what place?

A. I could not say—eastern points. That came off our Glendale branch.

Q. What rate did you make on fruit in connection with the steamers? Did you have a joint rate?

A. I could not say. I don't think any fruit moved that way.

Q. Oh, I thought you said some fruit did move that way?

A. Oh, no. Then I misunderstood you. It was turned over to either the Southern Pacific or the Santa Fe here.

Q. Oh, I asked you if it was turned over at San Pedro. I misunderstood your answer. So that, so far as this freight business was concerned in those days, it was practically confined to lumber?

A. Yes, sir; that is it.

Q. What were your first duties in connection with the Salt Lake road; that is, the new road, as distinguished from the old line to San Pedro?

A. Oh, anything—I don't know—I don't remember—I don't know just what you mean.

Q. What jurisdiction did you have? What did you have jurisdiction over?

A. What little there was here.

Q. What little there was there, outside of the terminals?

A. From here to Glendale, 10 miles, and from here to Pasadena.

Q. Yes; I am familiar with that. But I mean after you had begun to construct the new road, what did you first do? When I say "the new road" I mean the line to Salt Lake?

A. I had nothing to do with the construction of it.

Q. You had nothing to do with the construction of it?

A. No, sir.

Q. But you said you were at Salt Lake City for a while?

A. Yes, sir.

Q. When did you go there?

A. I went there in May, 1903, after the line south of Salt

1208 Lake, the Oregon Short Line south of Salt Lake, or rather the lines, were taken over by our company.

Q. They were not taken over until June, were they?

A. July 7th, as I remember.

Q. You went there before they were taken over, did you—a little before they were taken over?

Mr. KELLY. What year are you talking about, Mr. Severance?

Mr. SEVERANCE. 1903.

Mr. WELLS. 1903, yes.

Q. Up to July, 1903, who operated those lines in Utah?

A. The Oregon Short Line.

Q. Then they were operated as part of the Oregon Short Line system, in the same manner that they theretofore had been operated?

A. So far as I know, yes, sir.

Q. For a year after the contract was made between Mr. Harriman and Mr. Clark, which has been introduced in evidence?

A. Yes, sir.

Q. On July 9, 1902?

A. Yes, sir.

Q. When you took your position over there with the Short Line, it was publicly announced that the Salt Lake had taken over the property?

A. Oh, yes.

Q. And you went from here to handle that end?

A. Yes, sir.

Q. Who did you leave in charge of the operation at this end?

A. Well, as Mr. Clark stated yesterday, he was practically in charge.

Q. How much of the line was built when you went over there? I mean this end of the line. Had you built out to Riverside then?

A. No. It was out somewhere—well, somewhere between
1209 Riverside and here.

Q. Who had charge of the traffic on that end of the line, the Salt Lake end, beginning July, 1903, when you went over there?

A. Prior to my going there?

Q. No, after you went there.

A. After I went there, Mr. Gillett, Mr. E. W. Gillett, our General Freight and Passenger Agent.

Q. Where was he?

A. Well, his headquarters were here. He spent a good deal of time there, however.

Q. Was there any change made at that time in the rates on the lines taken over by your company, prior to the completion of the other line?

A. I think not, but I don't know. I don't know of any.

Q. Did you find in existence, when you went there, a division sheet as between those lines and the Union Pacific?

A. That I could not say. The details of the traffic, I was not familiar with.

Q. Well, was a division afterwards agreed upon?

A. It naturally must have been, yes.

Q. Do you know anything about what that division is?

A. No, I do not.

Q. You don't know now?

A. No, sir, I do not.

Q. Mr. Clark said that the traffic department reported to you.

A. So they do, in a general way.

Q. But they never report that to you?

A. No, sir, I don't think they do.

Q. So you know nothing about the division between the Union Pacific and the Salt Lake road?

A. Not the details of it, no.

Q. I don't care anything about the details. I mean the
1210 scheme on which the division is made. Is it made on a mileage basis, or on a basis in connection with computation of the locals, or how is it done?

A. I think it is a matter of contract—in that contract.

Q. But you do not recall how that contract provides, or how it figures out?

A. No, sir; I do not.

Commissioner LANE. Mr. Wells, have you copies of your division sheet?

WITNESS. Yes, sir.

Commissioner LANE. That is, you have got them here, have you not?

WITNESS. They are all filed with the Commission.

Commissioner LANE. A full division sheet?

WITNESS. I think so. That is my understanding of it.

Commissioner LANE. Then you are willing to have that made a part of the record in this case?

WITNESS. Yes, sir.

Mr. KELLY. There is no objection whatever to that.

Mr. SEVERANCE. You will have copies made?

Mr. KELLY. I will forward them to Washington.

Commissioner LANE. May I ask here who makes those divisions between yourself and the Union Pacific?

WITNESS. It is done as a matter of agreement between the traffic departments.

Commissioner LANE. And do you act for your road?

WITNESS. No, sir, I do not.

Commissioner LANE. Who does?

WITNESS. Now, the General Traffic Manager, Mr. Wann.

Commissioner LANE. Mr. Wann?

1211 WITNESS. Yes, sir.

Commissioner LANE. Have you heretofore acted in that matter?

WITNESS. No, sir. Mr. Gillett, General Freight and Passenger Agent, prior to Mr. Wann, acted in that capacity.

Commissioner LANE. Then in the making of a through rate with the Union Pacific, you do not act?

WITNESS. No, sir.

Commissioner LANE. But the freight man, Mr. Wann, or Mr. Gillett——

WITNESS. Yes, sir.

Commissioner LANE.—did act?

WITNESS. Yes, sir.

Mr. SEVERANCE. May I take that contract that is on your Honor's desk?

Commissioner LANE. Yes. Were their acts subject to revision by you?

Witness. Would be, if I wanted it, or if they thought it desirable.

Commissioner Lane. Who had the selection of this gentleman, Mr. Wann, and of Mr. Gillett, as well? Did you select them?

Witness. I selected Mr. Gillett.

Commissioner Lane. Was it a personal action on your part? To whom did you report the selection of Mr. Gillett?

Witness. To Mr. J. Ross Clark.

Commissioner Lane. As a member of the special committee?

Witness. At that time, no, sir; he was Second Vice-President and there was no special committee.

Commissioner Lane. That was six years ago, was it?

1212 Witness. Yes, sir, six years ago.

Commissioner Lane. And Mr. Wann's selection, how was that made?

Witness. As I understand it, by Senator Clark. He made the appointment—he made the announcement.

Commissioner Lane. He is President of the road?

A. Yes, sir.

Commissioner Lane. Proceed, Mr. Severance.

Q. While these adjustments were made by these other gentlemen, they were made, as you understand it, pursuant to the terms of the traffic contract between the Oregon Short Line, and the Union Pacific, and the Salt Lake road?

A. Yes, sir.

Q. Well, now, Mr. Wells, I don't want to spend time discussing traffic with you unless you have had something to do with it. But if you had anything whatever to do with it, I would like to get your knowledge upon the subject. I will ask you a general question. Was the making of rates or the agreeing upon a division of through rates reported to you?

A. I presume they were reported to me, officially—they undoubtedly were. But as to what they were, I really haven't got them in my head.

Q. I notice at the latter end of Section 12 of this contract, Exhibit 41, Millar, it is provided as follows: "Joint through rates for business other than that which is subject to the competition of rival carriers shall be divided *pro rata* per rate; that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties. Divisions of all

1213 joint through rates shall be made on Salt Lake; that is to say, the San Pedro Company and its connections to represent one unit, and the Short Line Company and its connections to represent another unit; but the minimum and arbitraries in this agreement otherwise provided for shall not be affected thereby." You are not familiar with that clause, are you?

A. Yes, sir.

Q. Do you understand that that business is divided according to the minimums and arbitraries described in another part of the contract?

A. Yes, sir, I presume so.

Q. In order to get at those rates, though, it would be necessary to inspect the local rates of each company?

A. Yes, sir, I suppose it would.

Q. While these rates were from time to time submitted to you, perhaps, for approval, you did not give much of any attention to them; as I understand it, they were in the charge of the traffic department?

A. That is the idea, yes. The head of the traffic department is held responsible for the proper computations.

Q. Then, as I understand it, Mr. Wells, the reporting by the traffic department to you, in so far as rates are concerned, is largely a formal matter?

A. To a very great extent, yes.

Q. So that as to rates, the matter is practically left to the traffic people?

A. Yes, sir.

Q. Subject to whatever contract obligations you are under?

A. Certainly.

Q. And the traffic man would be at present Mr. Wann, and formerly Mr. Gillett?

A. Yes, sir.

Q. Who has charge of operation?

A. I have.

Q. What arrangements have you between your road and any of the lines of the Harriman system with reference to the loan-
1214 ing to each other of cars? Or leasing to each other of cars?

A. None whatever.

Q. Have you ever had any?

A. I don't remember of any now.

Q. Have you ever had any arrangement for the leasing, one to the other, of motive power?

A. Not leasing, we——

Q. Well, loaning.

A. Well, we swapped; during reconstruction and construction, we had some modern power, large-wheeled engines, that were not suitable for construction service, and we turned those over to the Southern Pacific, or the Oregon Short Line it was, and in turn they would give us engines that were more suitable for construction purposes.

Q. Has there been nothing of that kind since the road was completed?

A. No, sir; I think not.

Q. You sometimes use their equipment, their flat-cars or box-cars?

A. Oh, yes.

Q. The same as you do of other lines?

A. Yes, sir.
Q. And what do you pay for them?
A. It is simply a question of per diem, the same as other lines.
Q. What per diem?
A. 50 cents from December 1st.
Q. You pay the same per diem as other lines?
A. Yes, sir.
Q. It was originally 20 cents, and is now 50 cents. Is that right?
A. Yes, sir.
Q. How much freight equipment have you now?
A. Offhand I should say 2,500 cars.
Q. Divided into what classes?
A. 750 coal cars, 750 box-cars, about 400 flat-cars, I should say, and general stock and miscellaneous cars—I don't remember the figures as to them.
Q. There has been introduced in evidence to-day a contract with Armour's car-lines, by which they agree to furnish you a max-
1215 imum of 3,000 refrigerator cars.
A. Yes, sir.
Q. How many of those cars have you in service?
A. Immediately on our lines?
Q. On your lines or under your control, engaged in your traffic?
A. To-day?
Q. Yes, sir.
A. About 250.
Q. Only 250?
A. Yes, sir.
Q. Why do you not have more? Don't you need them for your traffic?
A. Well, we can't move them very well.
Q. Why not?
A. We are short of power.
Q. You are short of power?
A. Yes, sir.
Q. When did you get short of power?
A. About September, I should say.
Q. What was the matter? Some of your engines smashed up?
A. Not that exactly. The business increased, for one thing, and all our heavy power now it is all going out at practically the same time, and requires more shop repairs. We have had to keep a good many engines in reconstruction and construction. That is about the story.
Q. Then, as I understand it, you are so deficient in power, and have been since last fall, that you can only employ in the movement of fruit 250 cars out of a possible 3,000?
A. Oh, no. That is not—I don't think that is the way the contract reads, and is certainly not the way it is intended to.
Q. You have a right to call on Armour & Company up to 3,000 refrigerator cars?

A. Yes, sir; but of course, you will appreciate we could not use all those cars all at once.

Q. Well, they would be scattered along over your connections, yes.

A. Oh, yes; but they would not be under our control. I
1216 understood you to say under our control.

Q. What I meant to say was, how many of those 3,000 cars are you employing in your business; that is, either on your own rails, or that have left your rails with loads and have not yet returned, but that are to be returned to you? That is what I intended to ask you, Mr. Wells.

A. I could not answer that offhand. It might be answered by—no, I would not undertake to say. I would not like to say. I could get the information very readily for you, if you desire it.

Q. Are you able to transport at the present time, with this lack of motive power that you speak of, all the freight that is tendered you?

A. We are doing it.

Q. You are doing it?

A. Yes, sir.

Q. And vegetables likewise?

A. Yes; subject to some delay.

Q. Yes. And you have been doing that all winter?

A. Yes, sir.

Q. What delays do you mean? You say subject to some delays. What delays do you mean?

A. The bunching of loads, trains, at the district terminals.

Q. How is that?

A. The bunching of trains at district terminals.

Q. Where are your district terminals?

A. Coming west from Salt Lake, at Lynn, and the next is Milford, the next is Caliente, Las Vegas, Daggett, San Bernardino, and Los Angeles.

Q. And by "bunching at terminals," you mean you start out with less than a full trainload, and unite that less than a trainload with another less than a trainload to make up a full trainload?

A. Sometimes that, and sometimes full trains.

Q. What do you mean? That you would put two full trainloads together?

A. I meant that while—no, not that, delays the fast train—that is what I intended to say.

1217 Q. That is to say, the train itself will be delayed?

A. Yes, sir; the train itself will be delayed.

Q. By reason of insufficient motive power?

A. Yes, sir. And then I had in mind your question as to handling all the traffic that is offered.

Q. Now, Mr. Wells, I asked you yesterday for a statement of the number of cars that you have handled last year and this year. Have you that statement with you?

A. Yes, sir; I have. Here it is.

Q. (After examining the paper handed him by the witness.) I notice by this statement, Mr. Wells, that you give the number of carloads of vegeables handled this year, whereas you do not give the number handled last year. Did you not handle vegetables last year on your line?

A. Very few cars, but I think they are there.

Q. How is that? I did not understand you.

A. I say, I rather think they are there.

Q. Here is the statement, Mr. Wells. I am asking in regard to the vegetables, now, you will remember.

A. (After examining the statement.) Then it must have been so small that they counted them into miscellaneous.

Q. You have practically gone into the vegetable business for the first time this year, then, Mr. Wells?

A. Yes, sir.

Q. I see you have divided your shipments of fruit for the year ending October 31, 1906, into local and other shipments. What do you mean by "local" shipments?

A. Destined to points west of the Missouri river.

Q. They are called "local," are they?

A. In this sense they are, yes; at least that is the way the statement was made up.

Q. Then in this particular instance, "local" does not mean Southern California alone?

A. No, sir; it does not.

1218 Q. But it means to any points local to your line and its immediate connections, the Short Line and Union Pacific?

A. Or more particularly in this case, to Denver.

Q. Yes. Then it is as to your immediate connections—you call that "local" as distinguished from "through"?

A. No, sir. It is simply a term, Mr. Severance, that is used and has been used by the citrus fruit people here, or by the railroads, if you please, in describing fruit that is destined to points other than the extreme east.

Q. I see. So that that is a generally accepted use of the term "local" in this vicinity?

A. So I am informed. That is what I understand, yes.

Q. So that it is not confined to California?

A. No, sir.

Q. And your through shipments are shipments that go east of the Missouri river?

A. Yes, sir.

Q. Is that right?

A. That is what this statement covers.

Q. Yes. That is what I mean, what this statement covers.

A. Yes, sir.

Q. When are the heaviest fruit shipments, as a rule; at what seasons of the year?

A. Oh, from my limited experience, I understand it is January, February and March.

Q. January, February and March?

A. Yes, sir.

Q. This year January was a light month, was it not, because of the climatic conditions?

A. Yes, sir.

Q. Too much rain?

A. That is the idea.

Q. And cold weather?

A. Yes, sir.

Q. How many packing houses have you on your lines in
1219 Southern California, fruit-packing houses?

A. I could not say. About a dozen, I should say.

Q. About a dozen?

A. Yes, sir.

Q. Do you happen to know how many there are on the other lines?

A. No, sir, I do not.

Q. Could you give an estimate as to what percentage of the packing houses in Southern California are on your line?

A. No, sir, I could not.

Q. Have you been over the lines?

A. I beg your pardon?

Q. Have you been over the lines here in Southern California?

A. Yes, sir, I have.

Q. And there is a very, very small percentage of the packing houses that are on your line. Is that true?

A. Yes, sir, that is true.

Q. Have you ascertained, Mr. Wells, what percentage of the fruit shipments for the year ending October 31, 1906, moved over your line?

A. I haven't figured it that way. Here are the carloads.

Q. How is that?

A. Here is the number of cars.

Q. This is the number of cars that moved over your line. But I asked you what the percentage of the total shipments going out of this territory moved over your line. Do you know what the total shipments were over the three lines?

A. Oh, they were about 25,000, I think.

Q. About 25,000. And the total number over your line was 2,330, as appears by this statement, which would be a little under 10 per cent. Is that about as you understand it?

A. Yes, sir.

Q. Do you know about what percentage of the shipments
1220 you are getting this year—since November 1, 1906?

A. No, sir, I don't know how it would figure that way.

Q. I notice that last year you seemed to get nearly half of your through shipments and also of your local shipments of citrus fruit of

the Santa Fe, while this year you only have 29 cars of through shipments from the Santa Fe out of a total of 336 cars, through shipments, and 5 cars out of 37, in local shipments. What made that change?

A. I don't know, I am sure.

Q. I see that last year you had about 45 per cent of your cars off the Santa Fe tracks, perhaps 40 per cent to 45 per cent, while this year it is less than 10 per cent.

A. Yes, sir—yes, I see that.

Q. Do you know any reason for that?

A. No, sir, I don't know any.

Q. How is that, Mr. Wells?

A. No, sir, I do not, I say.

Q. Is that by virtue of any arrangement of any sort between yourself, your lines, and the Santa Fe or Southern Pacific?

A. There is no arrangement.

Q. So that there is no arrangement between the companies that has anything to do with this remarkable change in the proportion of shipments you receive off one line and off the other?

A. No, sir.

Q. Are you able to give any reason why that should have been?

A. None occurs to me at present.

Q. How did you happen to have this year this large vegetable business, when last year you had, as you say, practically none?

A. It was solicited.

Q. Solicited by whom?

A. By our solicitors.

Q. By anybody else?

A. Yes, sir, by Mr. Munroe.

Q. Mr. Munroe is the Freight Traffic Manager of the Union Pacific, is he not?

1221 A. Yes, sir.

Q. He was out here?

A. Yes, sir.

Q. When was he here?

A. In the autumn some time; November, I think.

Q. Who was here with him?

A. I don't know. I was not here.

Q. You do not happen to know Mr. McCormick was here with him?

A. Yes, sir, that is true.

Q. You know that, do you?

A. Yes, sir.

Q. Mr. McCormick is Assistant Traffic Manager of the Harriman lines, is he?

A. Yes, sir.

Q. And you do know that while Mr. Munroe was here with Mr. McCormick, who is Assistant Traffic Director of the Southern Pacific,

as well as of the Union Pacific, Mr. Munroe was actively soliciting traffic to move over the Salt Lake and Union Pacific?

A. He was, yes, sir.

Q. How long did Mr. McCormick remain here?

A. I could not tell you.

Commissioner LANE. How has the vegetable business previously been done—by what line?

WITNESS. I don't know.

Commissioner LANE. That business is chiefly celery, is it not?

WITNESS. How is that?

Commissioner LANE. I say that is chiefly celery, is it not?

WITNESS. Chiefly celery, yes, sir.

Commissioner LANE. Did that formerly go by the Santa Fe, or did it go around by the Sunset route?

WITNESS. That I could not say. I do not know.

Q. In what kind of cars do these vegetables move?

A. In refrigerator cars.

1222 Q. Just the same class of equipment as the citrus fruit car?

A. Yes, sir.

Q. Armour cars?

A. Armour cars.

Q. I see that you moved locally 18 cars and through shipments 1092 cars, of vegetables between November 1, 1906, and February 3, 1907.

A. Yes, sir.

Q. Have you had any trouble getting sufficient equipment to move those cars?

A. Yes, we have.

Q. When?

A. As I explained a few minutes ago, difficulty in moving the empties.

Q. Have you been able to move all the vegetables tendered you? Have you had to serve notice on any vegetable growers that you could not take their vegetables?

A. That I could not say.

Q. You have not, to your knowledge?

A. No sir, that is what I meant to convey.

Q. What classes of vegetables are included in this traffic?

A. Celery, mostly, some cauliflower, I think that is all.

Q. Do you happen to know, Mr. Wells, the names of the consignors of this celery and cauliflower?

A. No, sir, I do not.

Q. You do not know who they are?

A. No, sir.

Q. There are certain large shippers here, are there not?

A. Yes sir.

Q. How is that?

A. I beg your pardon.

Q. There are certain large shippers here, are there not?

A. Yes, sir.

Q. Now, on whose tracks do these vegetables originate?

A. Southern Pacific.

Q. Then that large traffic of nearly 1100 cars was delivered to you, was it, from the Southern Pacific tracks?

A. Yes, sir.

1223 Q. By the Southern Pacific Railroad?

A. Yes, sir.

Q. What did they get out of it?

A. I could not tell you.

Q. You don't know what they got out of it?

A. No, sir, I don't know what they got out of it.

Q. They did get something, did they not?

A. Undoubtedly they got something out of it.

Q. At what point are these big celery beds?

A. South of here about 40 miles, I should judge.

Q. And where did they deliver the celery to you?

A. At Los Angeles, mostly; altogether, in fact.

Q. Have those cars been delivered to you without objection or demur by the Southern Pacific—as far as you know?

A. I could not say—I don't know that I understand your question.

Q. Have they delivered them to you without objection. Have the Southern Pacific made any objection to you to delivering those cars of vegetables to your lines?

A. Not to me, they have not, no.

Q. Have they to anybody else, as far as you know?

A. I could not say, I am sure.

Q. It was told here the other day that the Southern Pacific people have been notifying packers of fruit not to pack fruit at present, on account of the shortness of cars. Have you sent out any notice of that kind?

A. Not that I am aware of, no sir.

Q. Do you ship any vegetables or citrus fruits to the east in Armour cars that have been brought out here by the Southern Pacific?

A. Technically, yes. As for instance, we loaned them some cars at one time when we were flush and didn't need them, and they used these cars that we had hauled empty, and, of course, they naturally swapped back when we needed them.

1224 Q. Is it not a fact that Armour equipment is used as is most convenient between you and the Southern Pacific?

A. Naturally they are operating over both roads.

Q. That is what I want to get at.

A. Yes, sir.

Q. So that when you need any Armour cars, you take any cars there are here, whether they came out over your road or the other?

A. Well, no. I would be glad if that were so. We have to beg pretty hard before the S. P. will give up a car, you know.

Q. I understand that, but you do hand them back and forth, one to the other, you and the Southern Pacific?

A. We exchange cars; yes, sir.

Q. You exchange the Armour cars?

A. Yes, sir.

Q. What percentage of these fruit cars, Mr. Wells, are returned west empty? About what percentage?

A. I could not tell you.

Q. Taking it over your line, and what percentage would you say?

A. Oh, about—guessing at it, about 80 per cent or 90 per cent.

Q. 80 per cent or 90 per cent, may be. Is any effort made by you, or by your eastern connections to bring back loads in those cars?

A. Oh, yes, sir.

Q. And when you are successful, what classes of commodities do you bring in them?

A. Merchandise.

Q. Packing house products?

A. Sometimes, and merchandise also.

Q. Do you think, Mr. Wells, from your knowledge of operation that any considerable part of delay in getting citrus fruits to market was occasioned by the desire of the railroad to bring back loads in those refrigerator cars?

A. Oh, no.

Q. You don't think that cuts much figure?

A. No, sir—it would not in the case of our road I am sure, because of the small percentage.

1225 Q. You mean because of the small percentage of loaded cars coming back here?

A. Yes, sir. I would not be inclined to block the game that way.

Q. What other kind of commodities move to the east in any volume from this region, aside from citrus fruits and vegetables?

A. Well, that is about—that is our mainstay, I will say.

Q. Yes, that is right. That is as much your mainstay as grain is off in the northwest?

A. Yes, sir.

Q. What is there shipped in here aside from general merchandise and foodstuffs?

A. That is about all there is to it.

Q. That is about all?

A. Yes, sir.

Q. Then, necessarily, Mr. Wells, the great percentage of equipment must come west empty, must it not, because of the fact that there is so much greater tonnage movement to the east than to the west? I mean over your road, of course.

A. Yes, sir.

Q. To this immediate region down here?

A. Yes, sir.

Q. The Santa Fe road does not use Armour equipment, does it?

A. I could not say as to that.

Q. You don't know whether it does or not?

A. I don't know, no.

Q. You don't know that the Santa Fe road does use Armour cars?

A. I mean that I do not know that they are tabooed; I know they have their own refrigerator line.

Q. That is what I mean. They have a refrigerator line of their own, have they not?

A. Yes, sir.

Q. Do you know anything about a new refrigerator line that has recently been organized by the Harriman lines?

A. I know that there has been one organized.

Q. How is that?

A. I know that there has been one organized.

1226 Q. Did your people have anything to do with that?

A. I don't know.

Q. Who is there in your road that would know, Mr. Wells?

A. I think—well, I really don't know much about the concern—how far it has progressed. I don't know whether they have any refrigerator cars or not. It is a little thing yet, I guess.

Q. Yes. You don't know of anybody connected with your road that would know whether any arrangements had been made to——

A. I think I would know when it would assume proportions large enough to affect us—of course I would. We have received, I will say for your information, some three or four of the new cars under load. I am not quite sure about that, but I think they were under load, and we moved them from Salt Lake to Southern California—I don't know the destination.

Q. The Armour contract that you have provides for payment by the mile for the use of the cars, does it not?

A. Six tenths of a cent a mile.

Q. That is the payment divided between your line and the Union Pacific and the other roads, on a mileage basis?

A. Oh, absolutely.

Q. You pay by the mile, and they pay by the mile?

A. Yes, sir.

Q. And that is irrespective of the conditions of the freight?

A. Oh, yes; they are not connected in any way.

Q. They are not connected in any way?

A. No, sir.

Q. Who is there on your line of road, Mr. Wells, that would be apt to know the reason for the great change that appears by this table between the percentages of fruit shipments you received from the Santa Fe last year and this year?

A. Well, I don't know; the solicitors might.

1227 Q. They are the only people you can think of?

A. The general traffic manager might know.

Q. Has there been any difference in the relations between the Santa Fe and yourselves this year over any previous year?

A. No, sir.

Q. None whatever?

A. None that I know of.

Q. But, as I understand you, there is no arrangement existing whatever between your road and any other for the division of this business?

A. No, sir.

Q. None whatever?

A. None whatever.

Q. When Mr. Munroe was here soliciting vegetable shipments, he was also soliciting fruit shipments by way of your road, was he not?

A. That I could not say.

Q. You merely know as to the vegetables?

A. Yes, sir.

Q. Do you know who went around with him when he was here, introducing him to people?

A. No, sir. I was not in the city.

Q. Do you know anybody in your road that would know?

A. Yes, sir. I should suppose Mr. Peck, assistant general passenger agent, or Mr. Sloan, assistant general freight agent, would be with him.

Q. It has appeared here by some testimony, Mr. Wells, that for a time your road made some fast shipments of citrus fruits—about a year ago, last winter. You recall that fact, do you not?

A. Yes, sir.

Q. What was the time made to Chicago?

A. Something like 6 days, as I remember, or six and a half.

Q. What lines did these trains move over?

A. I beg pardon?

Q. What lines of road did those trains move over?

A. They were turned over to the Rio Grande at Provo and Salt Lake.

1228 Q. And who took them after the Rio Grande? The Burlington?

A. They took some, I believe; I don't know.

Q. How long did you run those fast trains.

A. I don't recall now. They were being run, as I remember it, when I was east, at Chicago, or somewhere. We didn't run them long.

Q. Did you stop them as quick as you got home?

A. Why, I don't recall whether I stopped them before or after I came home.

Q. Who was responsible for starting those trains?

A. Oh, I guess we were all a little bit eager about making a showing at the start.

Q. But this was not at the start, was it?

A. Practically, yes, sir.

Q. I thought this was along in December, and you started in May?

A. Well, I know, but then, there was no fruit moving, it was only—this fast time was made on citrus fruit.

Q. In what months?

A. It is my impression it was in January.

Q. In January?

A. Yes, sir.

Q. You made rather a long start, then—from May to January?

A. Yes, sir, it was a long start.

Q. A long start.

A. But the fruit didn't ripen.

Q. Do not the citrus fruits ripen earlier than January? That is, does not the citrus fruit season open earlier than January?

A. I think they have an official opening October 31st.

Q. Somebody or other was responsible for starting this 6 day service. Now, was that six day service abandoned through the request of the Rio Grande or the C. B. & Q.?

A. It worked itself out, as a matter of fact.

Q. Just answer my question. Did either the Rio Grande
1229 road or the C. B. & Q. request the abandonment of that through service, that fast service?

A. No, sir, they did not.

Q. Then, is it not a fact that your road was the one that caused it to be abandoned?

A. We were instrumental in it; there is no doubt about that.

Q. You were instrumental in it, you say. Whose instruments were you?

A. Nature's.

Q. Did the Southern Pacific people make any suggestions to you about that train—about those trains?

A. Yes, sir, they did. They protested.

Q. Yes; that is just what I thought.

A. So did the Santa Fe.

Q. And in deference to their request, you took off that train. Is that the idea?

A. No, sir, that is not quite so. We ran it to the end of the chapter, as long as our road was in a condition to run it.

Q. How long after those protests were lodged with you did your road continue in a condition to run these fast trains?

A. Well, I don't recall as to that.

Q. How quick did it wear itself out?

A. Pretty quick.

Q. Yes. That is just what I thought.

Commissioner LANE. How long did the trains run?

WITNESS. I beg your Honor's pardon? I did not get that.

Commissioner LANE. How long did they run? For how long a period of time did you run those trains, those fast trains?

WITNESS. I don't remember the exact time. I could get that for you, if you want me to.

Commissioner LANE. Just give it approximately?

WITNESS. Well, I think our trouble commenced in March,
1230 the first of March—our bad track and washouts, and a little of everything.

Commissioner LANE. You ran them from January to March?

Witness. January and February.

Commissioner Lane. January and February.

Witness. Yes, sir.

Commissioner Lane. When did you get the protests from the Southern Pacific and Santa Fe?

Witness. I think when the first train was landed in Chicago.

Commissioner Lane. You were not here when the trains were started, were you?

Witness. I think I was not. I know I was away about two months, or such a matter.

Commissioner Lane. You ordered them to be stopped yourself, either when you were east or when you were here?

Witness. No, I didn't order them to be stopped.

Commissioner Lane. Did you not? Who did order them stopped?

Witness. They stopped on account of disability on our part to keep the time up.

Commissioner Lane. Were there any orders given for them to be stopped at all?

Witness. Not by me.

Commissioner Lane. By anybody on the road?

Witness. Not that I know of.

Commissioner Lane. Just stopped of themselves.

Witness. Stopped of themselves.

Commissioner Lane. When were the protests made? At what time were the protests made?

Witness. I beg pardon?

Commissioner Lane. At what time were the protests made by the Southern Pacific?

Witness. As I say—I understand, they did not make the
1231 protests to me, but they were complaining, I think, when the first train reached Chicago.

Commissioner Lane. Upon what ground did they complain?

Witness. It was setting a pretty lively pace, you know, for an infant road.

Commissioner Lane. To whom did they complain?

Witness. I think to our traffic department here; I could not say.

Commissioner Lane. Who were the complaints made by, what officers?

Witness. That I don't know.

Commissioner Lane. Did you see the complaints yourself?

Witness. No, sir.

Commissioner Lane. Did they come in the form of telegrams?

Witness. No, sir. Well, I don't know, they were not to me. I could not say.

Commissioner Lane. How did you know, then, the time when the complaints were made?

Witness. Well, I am guessing at that, to a large extent.

Commissioner Lane. When the bad times were over, why did you not start those trains up again—bad times on your road, I mean?

Witness. Well, the bad times are not over yet.

Commissioner LANE. They are not over yet?

WITNESS. Not quite, no, sir; not by any means.

Commissioner LANE. But you are able to handle all the business that is given to you, I understood.

WITNESS. Yes, sir, but not in a satisfactory way, as I think I stated to Mr. Severance.

Commissioner LANE. Is there much competition between you and the Southern Pacific over the Sacramento gateway for that business?

1232 WITNESS. I do not know about the Sacramento gateway particularly, Mr. Commissioner, but I do know there is the liveliest competition for every pound we get.

Commissioner LANE. You have to fight for business?

WITNESS. Yes, sir.

Commissioner LANE. Your solicitors solicit as against the Southern Pacific and Santa Fe?

WITNESS. Yes, sir; they do.

Commissioner LANE. And the Union Pacific solicitor comes down here sometimes and solicits for your road?

WITNESS. There is one stationed here who solicits for us continually.

Mr. SEVERANCE. As against the Southern Pacific and against the Santa Fe?

WITNESS. Yes, sir.

Commissioner LANE. For you and for the Union Pacific?

WITNESS. Yes, sir.

Commissioner LANE. Does that solicitation take the form at all of preference in the way of freights, or preference in the way of special facilities?

WITNESS. I don't understand you.

Commissioner LANE. I mean, does the Union Pacific make any offer of specially fast time as against the Southern Pacific when it solicits fruit going over your line?

WITNESS. That is all, I should say—I am not very familiar with their methods, in fact, I am not familiar at all, I don't know.

Commissioner LANE. You have got the figures there showing the amount of business that goes from Southern California by way

1233 of Sacramento, have you, Mr. Severance?

Mr. SEVERANCE. No.

Mr. KELLY. You haven't asked for them.

Mr. SEVERANCE. I have not had a Southern Pacific man on the stand. We will find that out when we get Mr. Graham on the stand.

Q. Mr. Wells, is your road in a worse physical condition now than it was at the time you were running those fast citrus fruit trains?

A. No, sir.

Q. Then, why is it that you have not put those trains back on, on that fast service, if you have got your road fixed up?

A. We are very short on motive power, for one thing.

Q. Have you less motive power than you had then?

A. Less available motive power: I should have put it that way.

Q. What do you mean by "available motive power?"

A. Out of the shops.

Q. Have you bought any new locomotives since that time?

A. No, sir: not delivered.

Q. You have not added anything to your motive power, then, in the last year?

A. No, sir.

Q. Who told you about the protests made by the Santa Fe and the Southern Pacific? Was it Mr. Gillett?

A. It came from his department: either Mr. Gillett or Mr. Sloan.

Q. And they objected to the fact that you were giving such quick service, citrus fruit service?

A. Yes, sir.

Q. And did they state they did not want to give as fast service as that?

A. That I could not say.

Q. Did your business in the shipment of citrus fruits largely
1234 increase while those trains were on?

A. That I could not say.

Q. Do you not know, as a matter of fact, that the business was being largely turned over to you or offered to you because of that fast service?

A. I have no doubt it had something to do with it, yes, sir.

Q. Then your business fell off again afterwards, when you reduced your schedule?

A. When we were compelled to, yes, sir.

Q. When you were compelled to reduce your schedule?

A. And when I say "compelled," I mean by physical possibility.

Q. Oh, yes, I understand. Now, you say you got that information from Mr. Gillett, or Mr. Sloan. Can you say which man told you?

A. No, sir, I could not. It was most likely Mr. Gillett.

Q. You have talked to Mr. Gillett, on the subject, have you not?

A. Very often.

Q. So that Mr. Gillett is and has been, either by getting complaints directly, or having them come through his department, thoroughly familiar with the fact that the protest was made by the other lines?

A. I should think so—oh, yes.

Mr. SEVERANCE. I think that is all I care to ask Mr. Wells. I would like, however, to have this statement or table which he has produced marked Exhibit 1 to his testimony.

The table last above referred to was marked Complainant's Exhibit 80, (Wells), and was offered in evidence by Mr. Severance.

Complainant's Exhibit 80, (Wells), is as follows:

1235

COMPLAINANT'S EXHIBIT 80.

(Wells.)

Carloads of citrus fruit handled season of 1905–6, November 1, 1905, to October 31, 1906.

Originating on—	Local.	Through.	Total.
S. P., L. A. & S. L. R. R.	44	647	691
Southern Pacific	18	561	579
Santa Fe	34	1,026	1,060
Total	96	2,234	2,330

From November 1, 1906, to February 3, 1907.

S. P., L. A. & S. L. R. R.	13	134	147
Southern Pacific	19	173	192
Santa Fe	5	29	34
Total	37	336	373

Carloads citrus fruit originating on S. P., L. A. & S. L. R. R. and delivered other lines for competitive points.

To Southern Pacific	60 cars
To Santa Fe	56 cars

Carloads vegetables handled from November 1, 1906, to February 3, 1907.

Local	18 cars
Through	1,092 cars
Total	1,110 cars

1236 Mr. SEVERANCE. I next offer pursuant to stipulation, the testimony given by Thomas H. Phillips, a witness before the Interstate Commerce Commission, who testified February 8, 1907, at the City of Los Angeles, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Phillips were upon the stand giving the same testimony?

Mr. LOVETT. Yes.

THOMAS H. PHILLIPS

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Phillips, where do you live?

A. Los Angeles.

Q. What is your business?

A. Fruit business.

Q. What are your initials, Mr. Phillips?

A. T. H.

Q. And what do you say your business is?

A. Fruit business.

Q. And vegetables?

A. I am not particularly connected with the vegetable business now. I was prior to November 1st last.

Q. What fruit company are you connected with?

A. I am Traffic Manager of the California Citrus Union, Los Angeles, and of the Earl Fruit Company, Sacramento.

Q. Will you state the amount of your shipments per annum from Southern California points?

A. No, sir, I could not state that, the amount of our shipments exactly. Our shipment is about 20 per cent of the Southern California output. The exact number of cars I could not tell.

Q. You ship about 20 per cent of them?

A. About 20 per cent of them, yes, sir.

Q. And over what lines do you ship?

1237 A. We ship over them all—the California Citrus Union, you mean?

Q. Yes.

A. We ship our citrus fruits over them all, the Santa Fe, the Salt Lake, and the Southern Pacific.

Q. Can you tell how much of your business was shipped last year over the Salt Lake?

A. About 175 cars—the Citrus Union you are still speaking about?

Q. Yes; I am speaking of the Citrus Union, and I am speaking of the Southern California business.

A. Yes, sir.

Q. What is the time that you get from here to Chicago, on shipments by these various lines?

A. This season or——

Q. Take this season; yes.

A. Well, we have—I made an average from the 1st of November, when the season commenced, up to the present time, and we are averaging about 12½ days by the Salt Lake and the Union Pacific, and about 13 days by the Santa Fe.

Q. How was it last year?

A. Last year we made much better time.

Q. How much better?

A. Very much better. We made via the Southern Pacific, El Paso, in connection with the Rock Island, 6 days to Kansas City and 7½ to Chicago.

Q. Now, do you move—

A. I mean to say—I would like to qualify that. There are, of course, exceptions to that. There was some that took longer, but they made that time pretty regularly for quite a long while.

Q. Are you moving fruit shipments to the east by way of Sacramento now?

A. No, sir.

Q. Everything that goes north goes Salt Lake, does it?

A. Everything that goes north? No, sir.

1238 Q. I mean everything going by the Union Pacific.

A. Everything going by the northern gateway goes by the Salt Lake and Union Pacific.

Q. On what tracks are your packing houses located, chiefly?

A. Well, we have some—we are an exception to the other packers in that we have more warehouses on the Southern Pacific tracks than we have on any other tracks.

Q. And from what warehouses do you get these fruits that go by the Salt Lake route?

A. From the packing houses on the Salt Lake and on the Southern Pacific.

Q. What is the rate from here to Chicago and eastern points on oranges?

A. $1.25 per hundred pounds; 90 cents a box.

Q. What is the rate on lemons?

A. $1.00 per hundred pounds.

Q. What was your business before you became Traffic Manager of the Citrus Union?

A. I was in the railroad business 22 years.

Q. With what companies?

A. With the Union Pacific 13 years; with the Oregon Railway & Navigation Company 4 years; with the Canadian Pacific one year, and with the C., M. & St. P. one year, and the Southern Pacific about 4 years.

Q. In the traffic department?

A. Yes, sir.

Q. What is the reason, Mr. Phillips, for lemons carrying a lower rate than oranges, if you know?

A. I don't know. I don't know particularly. They call it an emergency rate on lemons, but I could not give you any reason.

Q. A little louder, please.

A. I say they put that rate of $1.00 in on lemons as an emergency rate.

Q. When?

A. Well, it has been in all this season, and I think it was in all last season.

Q. What was the emergency that lasted so long?

A. I could not tell you.

1239 Q. Who dubbed that an emergency rate?

A. That is what it was called by the railroad company.

Q. Is there anything in the nature of the two kinds of commodities, oranges and lemons, that from your experience as a railroad man would entitle lemons to a lower rate than oranges?

A. No, I don't know any particular reason. Lemons are harder to carry than oranges are.

Q. Harder to carry, you say. Why? Because they are more perishable than oranges?

A. Yes, sir, more perishable, more tender.

Q. Still there is a 25-cent lower rate on lemons than on oranges, as you have said.

A. Yes, sir, there is a difference of 25 cents.

Q. The rates are the same, I see, by all the lines.

A. Yes, sir. I would like to say that when I say I do not know the reason for that difference in the rates, I, of course, could not give the reasons for the railroad men giving us that emergency rate on lemons. They could explain that better themselves. But, of course, I have an opinion of why it may have been done. It may have been done to encourage the California lemon industry as against the foreign shipments of lemons to this country.

Q. As against the foreign shipments of lemons?

A. The foreign shipments of lemons, yes, sir.

Q. Lemons were being imported, were they?

A. Yes, sir. There are lemons being imported from Sicily, and several years ago they were being imported very largely from Sicily. The California lemon is now getting the upper hand of the foreign lemon.

Q. That competition, as far as you are advised, put down the rate, did it?

A. I judge that is the reason it was done, yes, sir.

1240 Q. But, so far as the cost of service is concerned or the nature of the commodity, as far as being perishable and difficult to handle is concerned, you know of no reason why one should require a lower rate than the other?

A. No, sir.

Q. How have you been treated in the matter of getting cars this year?

A. We have not been able to get sufficient cars to get the fruit to market.

Q. What has been the extent of the shortage?

A. Well on to 2000 cars at the present date—between two and three thousand cars.

Q. That is, you are short between two and three thousand cars?

A. We are short between two and three thousand cars up to this present time as compared with last season.

Q. Is that entirely because of shortage of cars?

A. I could not say it was entirely from that cause, but it is very largely from that cause. We have had difficulty in getting cars this whole season, from the very beginning, from the first of November.

Q. From which road have you had the most difficulty?

A. We have had the most difficulty with the Southern Pacific road.

Q. And less with the Santa Fe and Salt Lake?

A. Well, we have had a great deal of difficulty with the Salt Lake, too. We have had less difficulty, though we have had difficulty all around, in getting cars from the Santa Fe than we have had from the Southern Pacific and Salt Lake.

Q. What is the result of this shortage to you? What is the result to your business?

A. A very great loss. We have got oranges in our packing
1241 houses now ready to ship that we can't get cars to ship them in. It means a very heavy loss.

Q. What efforts have you made to get cars?

A. I have pretty near slept with the railroad men day and night, trying to get them.

Q. Have you had to haul oranges or citrus fruit by team?

A. Yes, sir.

Q. State under what circumstances.

A. Well, when we have packing houses that are within a few miles of each other on the different lines of the Southern Pacific and Santa Fe and Salt Lake, and we have had oranges packed and in our packing houses, and orders for them, the oranges sold and we could not get the cars from the Southern Pacific, if we had a Santa Fe packing house within 7 or 8 or 9 miles, we would haul the fruit over to the other packing house, if we could get cars there. We have had that happen in both. We have hauled from West Orange to Orange, and we have hauled on different hauls—from Pomona, and so forth.

Q. Mr. Phillips, in shipping over the Salt Lake road from houses located on the Southern Pacific track, will you state whether during the present season the representatives of the Southern Pacific have made any objection to the shipments going that way, going by Salt Lake—where you routed the goods over the Salt Lake road, and those goods come from packing houses on Southern Pacific tracks, does Mr. Graham, the representative of the Southern Pacific people, or any of his people, make any objection—during the present season?

A. During the present season?

Q. Yes.

A. No, sir, not during the present season.

Q. But they used to?

A. Last season Mr. Graham called at my office and made
1242 very serious objection to my routing citrus fruits originating on the Southern Pacific line over the Salt Lake line. But I would like to state that it has been our rule, our practice in past years, not to begin routing our shipments by the Southern Pacific and Sacramento until the 1st of March, and his protests made last year were made after the 1st of March. We have shipped all our shipments heretofore, practically, by the Southern Pacific, El Paso, and Rock Island, because we got the best service that way.

Q. Until this present season?

A. Until this present season; yes, sir.

Q. But Mr. Graham has made no objection this present year to your routing via Salt Lake instead of routing via El Paso?

A. Mr. Graham called on me this year and told me he would expect to get business after the 1st of March the same as before.

Q. Said he would after the 1st of March, but not until then?

A. No, sir; he didn't say anything about that; that is this year.

Q. Did you send over the Salt Lake road any of these shipments that went so fast a year ago?

A. Yes, sir.

Q. How many trainloads did you send, about?

A. Well, we didn't send trainloads especially, ourselves. We assisted the exchange and others in making up trainloads. For instance, I would give 10 or 15 cars towards making up a train of 25 cars.

Q. Of what advantage is that quick service to the orange industry?

A. A very great advantage. Every day gained is a big advantage in shipping oranges east.

Q. For what reason?

A. Well, oranges are a perishable product, and the quicker we can get them to their destination and sold and our draft paid,
1243 the more money we are likely to have for our growers, and that is beneficial to them and to the industry in Southern California. If we can get a car into Chicago in 7 days and delivered to a consignee, and he pays his draft, and it should go to pieces on the eighth day that loss would be with him and not with the California growers. Therefore every day counts on an orange shipment, or any other perishable goods.

Q. Do you recall how long that train was kept in service?

A. That service? Those trains? Oh, I don't remember the exact number of trains. It seems to me that it was just four or five trains. They made as low as 5½ days to Chicago, one train.

Q. 5½ days?

A. Yes, sir. But after the decision of the Interstate Commerce Commission—of the Supreme Court, rather—we never got as good service after that as we did before.

Q. That is, the service seemed to drop off after that decision as to routing?

A. Not as to routing; no, sir.

Q. Which decision do you mean?

A. The decision in which the growers had the routing. They have never interfered with our routing since. Whether incidentally or not, I don't know, but since then we have never got as good service as we did before that.

Q. It may have been coincidence.

A. It may have been coincidence. Since then the routing has never been interfered with.

Mr. DUNNE. Mr. Phillips, you suggested that Mr. Graham told you this year that he would expect business after March via Sacramento and Ogden.

WITNESS. He told me that; yes, sir.

Mr. DUNNE. Is that the time of year when the northward movement of oranges is usually made?

1244 WITNESS. Has been; yes, sir.

Mr. DUNNE. Now, in this same year, or season, did the Southern Pacific take any of your shipments over its rails other than

by the northern gateway? Did you send any by El Paso and the Rock Island?

WITNESS. This year?

Mr. DUNNE. Yes.

WITNESS. Oh, yes. We are sending them now.

Mr. DUNNE. What I want to know is, how the shipments that you sent by the Salt Lake and the shipments that you sent by the Southern Pacific, El Paso, and the Rock Island, this year, compared as to their respective volumes?

WITNESS. I can only speak, of course, for our own companies. I am sending two days in a week via the Southern Pacific, El Paso, and the Rock Island, and two days in the week via the S. P., T. & P., and M., K. & T., and two days in the week by the Salt Lake and Union Pacific.

Mr. DUNNE. In which direction does the greater volume of the shipment move?

WITNESS. At the present time?

Mr. DUNNE. Yes. In other words, does the Salt Lake get the bulk of the movement, or does the bulk of it go by way of El Paso?

WITNESS. Well, Mr. Dunne, the bulk of it, according to my running sheets, would go by El Paso. But, on account of the peculiar and abnormal car conditions at the present time, I am routing wherever I can get cars.

Mr. DUNNE. But under normal conditions, you say the greater part of your business would move by El Paso?

1245 WITNESS. Four days to two.

Mr. DUNNE. Four days to two?

WITNESS. Yes, sir.

Mr. DUNNE. That is all.

Mr. SEVERANCE. That is all, Mr. Phillips.

Mr. KELLY. Just one word. Can you tell how many packing houses there are on the Southern Pacific lines on this Southern California citrus belt?

WITNESS. I can tell how many we have.

Mr. KELLY. How many have you?

WITNESS. We have 49 packing houses on the Southern Pacific, 42 on the Santa Fe, and 3 on the Salt Lake.

Mr. KELLY. 49 on the Southern Pacific, 42 on the Santa Fe, and 3 on the Salt Lake?

WITNESS. 49 on the Southern Pacific, 42 on the Santa Fe, and 3 on the Salt Lake; yes, sir.

Mr. DUNNE. That is all.

By Mr. SEVERANCE:

Q. By the way Mr. Phillips, have you received any notice not to pick oranges?—A. Yes, sir.

Q. From whom?—A. From the Southern Pacific.

Q. When?—A. Last Friday, I believe.

Q. How long is that embargo for, or was there anything said about how long?—A. It was not said how long—until further notice.

Mr. DUNNE. That is a question of car supply?
WITNESS. That is a case of car supply.
Mr. DUNNE. That is all.

1246 Mr. SEVERANCE. I next offer, pursuant to stipulation, the testimony given by B. A. Woodford, a witness before the Interstate Commerce Commission, who testified February 8, 1907, at the city of Los Angeles, California. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Woodford were upon the stand giving the same testimony?
Mr. LOVETT. Yes.

B. A. WOODFORD

testified:

Examined by Mr. SEVERANCE:

Q. Mr. Woodford, what is your business?—A. General Manager of the California Fruit Growers' Exchange.

Q. That is the same company of which Mr. Story is the President?—A. Yes, sir, the same company of which he is President.

Q. How long have you been in the fruit business?—A. I have been in Southern California 18 years, but in the shipping of fruits about 12 or 14 years—13 years.

Q. Mr. Story stated that you shipped about 47 per cent of the fruit crop last year. Is that about your idea?—A. Yes, sir; last year and the year before.

Q. How about it this year?—A. I think we will ship more.

Q. Over what lines?—A. All the lines.

Q. How do you divide it?—A. We don't divide it.

Q. Who divides it?—A. Well, the location of the packing houses largely divides it.

Q. Is that always so?—A. Not always.

Q. Well, what are the instances in which it is divided other-
1247 wise than according to the location of the packing houses?—A. Well, we have—many of our shipments originate on the Santa Fe, and we wish the fruit to move to the northwestern non-competitive points, like Seattle or Portland, and of course that moves Southern Pacific rather than Santa Fe. And at times the Santa Fe has had large quantities of fruit move out of this country, when it would look as if they had more than they had facilities for, and such shipments have been moved by other lines.

Q. What arrangements do you make to have it moved by other lines, or what arrangements do the railroads make to have it moved by other lines?—A. I don't know what arrangements are made; that is, I don't know what arrangements the railroads make. We don't make any.

Q. You don't make any arrangements?—A. No, sir; we permit it to be done.

Q. That is what I want to get at. Then fruit that originates on one line is at times moved over a competitive line; that is, we will say that fruit originating on the Santa Fe is moved by the Southern

Pacific, and fruit that originates on the Southern Pacific is moved by the Santa Fe.—A. Very seldom anything originating on the Southern Pacific goes by the Santa Fe.

Q. Or the Salt Lake?—A. Yes, sir, or the Salt Lake.

Q. Or the Salt Lake at the request of the Santa Fe?—A. Yes, sir.

Q. Have you any houses located on the Salt Lake line?—A. I think we have 4 or 5; something like that.

Q. Out of how many?—A. Out of less than 100; probably 80 houses.

1248 Q. And what percentage of your shipment goes over the Salt Lake?—A. Well, I can't tell you that. I haven't made up a record of our shipments. I think, according to the published reports of the railroads, that the Salt Lake last year had about 10 percent. of the citrus fruits traffic, and the Santa Fe and the Southern Pacific each about 45 percent. But that is not our associations' line of business alone.

Q. I understand. That is all the business. Those reports were sent out by the railroads, were they not?—A. I think they are published daily, the shipments.

Q. And it figured 45 percent. to the Santa Fe and the Southern Pacific, that is, to each of those roads, and 10 percent. to the Salt Lake?—A. Yes, sir; something like that.

Q. When you ship on the Salt Lake road, where does that fruit originate?—A. On the Salt Lake, or on the Southern Pacific, or on the Santa Fe.

Q. Did you see Mr. Munroe when he was out here?—A. I did.

Q. Did he have any talk with you about moving traffic over the Salt Lake and Union Pacific?—A. He did. He was anxious for shipments.

Q. Have you shipped that way since then?—A. Very little fruit has gone that way since then. Our shipments have moved largely by the Santa Fe, or south by El Paso.

Q. Is that on account of the weather conditions?—A. Climatic conditions. We begin to move fruit north the last of February or first of March.

Q. By "north," which route do you mean it moves over?—A. I mean going through the Ogden gateway.

Q. Of this 10 per cent that the Salt Lake moved last year,
1249 of the total shipments, can you state whether the whole or a large percentage of that originated on their own rails?—A. I think a very small part of it originated on their own rails.

Q. A very small part of it, you say?—A. That is my opinion of the matter; yes, sir.

Mr. DUNNE. Do you mean the Salt Lake rails?

WITNESS. The Salt Lake rails.

Q. It came off of the other lines.—A. Yes, sir.

Q. What percentage of the packing houses in this district are on the Santa Fe rails?—A. I can't tell you that. About 60 per cent of all the fruit that is packed in warehouses originates, I think, on the Santa Fe.

Q. That is what I want to get at.—A. Some packing houses may pack more fruit than others.

Q. I understand that. But the fact is that about 60 per cent out of the total of the citrus fruits raised here is tributary to the Santa Fe road?—A. Yes, sir.

Q. Still, when it comes to moving it to market, last year the Santa Fe moved about 45 per cent of the total shipments, the Southern Pacific about 45 per cent, and the Salt Lake about 10 per cent?—A. Yes, sir; approximately, according to their published reports.

Q. Mr. Woodford, have you anything to say on the subject of the freight rates that are now charged and were formerly charged?—A. Well, the freight rate on oranges has been the same for approximately 20 years, $1.25 a hundred pounds.

Q. 20 years, you say?—A. Yes, sir; approximately. That is, for all points east of the east line of Colorado.

1250 Q. Is there any difference in the rate by reason of the change in the boxes, the weight of the boxes?—A. The estimated weight has been increased from 70 to 72 pounds in these last years, and the minimum has been increased from 20,000 pounds originally to very close to 28,000 pounds to the car now.

Q. Does this increase in the estimated weight of the boxes have a tendency to slightly increase the freight rate on the product?—A. By two-seventieths, yes, sir.

Q. So that the rate, instead of having been lowered, has been increased by 2/70?—A. In that manner.

Q. In that way?—A. Yes, sir.

Q. When did that change in the estimated weight of the boxes begin?—A. I think that must have been 7 or 8 years ago.

Q. That has been kept at the same figures since?—A. Yes, sir.

Q. What have you to say as to the fairness of this rate, from the standpoint of a shipper?—A. From the standpoint of the grower, and as compared with the rate on other California products, I think the orange rate is too high.

Q. As compared with what other products?—A. Well, celery, or apples.

Q. And lemons?—A. Well, there was a special reason for the reduction in the lemon rate, and I would not like to cite that as an instance. The railroads granted the lemon rate of $1.00 largely for the same reason that a protective tariff is given, to encourage the industry. The people were budding over their lemon trees, and were going out of the lemon business, and they had had several hard years, and were increasing their orange acreage, and decreasing their lemon acreage, and the railroads and the growers got together with the idea that the dollar rate would help that situation, and I think it has.

1251 Q. What is the rate on celery?—A. It varies. It is not a blanket rate.

Q. It is not a blanket rate?—A. No, sir.

Q. But the rate on oranges is a blanket rate for all territory east of where—the Missouri River?—A. East of the eastern boundary of

Colorado, except certain southeastern territory and Canadian territory, where there is still a higher rate than $1.25.

Q. You say the celery rate varies. Take it to Colorado common points. Do you ship celery there, or does it all go farther east?—A. I am not familiar with the movement of celery. We don't ship any.

Q. Then why did you make the comparison with celery?—A. The celery rate to Cleveland, Ohio, I understand, is $1.08 a hundred, and the center of distribution of our citrus fruits is somewhat west of Cleveland, Ohio, and we pay $1.25 flat all over that country.

Q. Is there a difference in the way citrus fruits are moved and celery has been moved?—A. Celery practically moves entirely under ice, I think, refrigeration, and a few of our oranges move under ventilation without ice.

Q. Do you remember the time that the Salt Lake road ran those fast trains?—A. I do.

Q. What was the effect on the traffic of the Salt Lake, if you know?—A. We were anxious to give them all the traffic we could, on account of that fact.

Q. Why?—A. On account of the time, approximately 6 days to Chicago.

Q. Have you ever had any talk with their officials about re-
1252 instating that time?—A. Indirectly. Mr. Dezell, my assistant, has been handling that part of it.

Q. It never has been reinstated, has it?—A. Not to my knowledge.

Q. How are your shipments this year? About how long does it take to get them through to Chicago?—A. Well, via El Paso, and Rock Island, the Southern Pacific and Rock Island, I think we have been getting through about the 9th day from loading, recently, and via the Santa Fe, probably a couple of days slower, about 11 days to Chicago.

Q. I think that is all.

By Mr. DUNNE:

Q. Mr. Woodford, do you consider the rate on lemons high?—A. It is high enough.

Q. Do you consider it a reasonable rate?—A. Why, yes, I think it is a reasonable rate.

Q. Do you consider the rate upon celery a reasonable rate?—A. I don't know much about the celery business.

Q. The celery rate applies only as far as Chicago, does it not?—A. I think they have a graduated rate. It varies.

Q. I refer to the 90-cent rate. It won't take celery east of Chicago, will it?—A. I presume not. I don't know that there is a 90-cent rate to Chicago.

Q. You understand that the rate of $1.25 on oranges is a blanket rate for all points from the Missouri River east?—A. Or from the east of the eastern boundary line of Colorado.

Q. Do I understand you to say that very few cars move over the Santa Fe rails taking oranges from the packing houses, taking oranges from the packing houses on Santa Fe rails, move from those houses on to the Southern Pacific rails?—A. I didn't say that, no, sir.

1253 Q. I mean the other way, Mr. Woodford?—A. Just the reverse.

Q. Very few cars move from Southern Pacific rails, taking oranges from Southern Pacific packing houses, if I may so describe them for convenience, and are transported on the Santa Fe rails to destination?—A. Very seldom is that done.

Q. But you have seen a good many cars shipped in the reverse way?—A. Yes, sir.

Q. Now, Mr. Woodford, points in Texas, Montana, Louisiana, Washington—points of that kind would be served, would they not, by Southern Pacific rails?—A. Certainly. You can reach Texas points and Louisiana points by Santa Fe rails also.

Q. Is not this question of the orange rate a question not so much of the amount of the rate as a question of service—of an expedited service?—A. It is both.

Q. Sir?—A. Both, both are valuable.

Q. Is it not principally an expedited service? Is not the other consideration merely incidental, Mr. Woodford?—A. No, sir; I should not say that. You might have a $3.60 rate, and it surely would not be incidental.

Q. Well, but this is a $1.25 rate.—A. A $1.25 rate means a good deal to us.

Q. I ask you this question: If a $1.25 rate with an expedited service would not be generally satisfactory to the growers and shippers?—A. No, sir; it would not. It is too high.

Q. Were you here at the time of the hearing before the Interstate Commerce Commission of the orange rate case?—A. I was here, but I was not present at the hearing. I was here in Los Angeles.

Q. Did you hear any statements made upon the lines I have

1254 just suggested, by the shippers themselves?—A. I think the shippers themselves stated that the service was a great point, but I think they also stated that the rate was a great point.

Q. That is your understanding, is it?—A. That is my understanding, yes, sir.

Q. Very well. I think that is all.

Mr. Severance. That is all, Mr. Woodford.

1255 Mr. Severance. I next offer, pursuant to stipulation, portions of the testimony given by Edward H. Harriman, a witness before the Interstate Commerce Commission, who testified on February 25, 1907, at the city of New York. I understand it is agreed by all parties that this testimony may be written into the record and have the same force and effect as though Mr. Harriman were upon the stand giving the same testimony?

Mr. Lovett. Yes.

EDWARD H. HARRIMAN

testified:

Examined by Mr. KELLOGG.

Q. Mr. Harriman, you are president of the Union Pacific Railroad?—A. Yes, sir.

Q. You have been chairman of the Board of Directors since about 1900?—A. Chairman of the executive committee.

Q. Chairman of the executive committee?—A. Yes.

Q. You are also president of the Southern Pacific, the Oregon Short Line, and the Navigation Company?—A. Yes.

Q. Are you chairman of the Board of Directors of the Southern Pacific Company?—A. Of the executive committee.

Q. Of the executive committee?—A. Yes.

Q. You took that position shortly after the acquisition of the stock of the Southern Pacific by the Union Pacific Company, didn't you?—A. Yes.

Q. Since that time you have acted as chairman of the executive committee?—A. Yes.

1256 Q. And after the retirement of Mr. Hayes as president of that company?—A. As president; yes, sir.

Q. Yes.—A. Yes.

Q. So that we may not duplicate things that have been put in before, I will ask you in a general way if about January, 1901, or during the winter of 1901, the Union Pacific Railroad Company issued or provided for the issue of $100,000,000 of convertible bonds for the purpose of acquiring stocks in other railway companies?—A. Well, I don't think that is hardly the way to put it. We issued $100,000,000 of convertible bonds primarily to pay for the Southern Pacific, which had been purchased first, not generally to purchase the securities of other railroads.

Q. $40,000,000 of these bonds were sold to Kuhn, Loeb & Co., to pay for the first 750,000 shares of the stock of the Southern Pacific Company purchased, was it not?—A. Yes, sir.

Q. And the cost of that stock, with the commission on the bonds and the commission on the purchase, was, according to a statement furnished by your company, $41,806,827?—A. Yes, sir. I suppose that is right.

Q. Yes, that is correct. That included the commission on the bonds and the commission on the purchase of the stock, did it not?—A. If the statement so shows, I presume it did. I could not say from recollection just what it was.

Q. I understand, Mr. Harriman, you could not guarantee the accuracy of these figures, but that is correct, according to the statement furnished us. Out of those bonds you also used $61,000,000

1257 for the purchase money certificates to buy the Northern Pacific stock, or about that sum, did you not?—A. I think about that, yes.

Q. The other $27,000,000 invested in the Northern Pacific stock was furnished by the Oregon Short Line Company, was it?—A. Well, if the statements so show, I have no doubt it was.

Q. About $27,000,000 more?—A. Well, I don't know exactly that.

Q. That was about the balance of the purchase, was it not?—A. Does not the statement show that? I can not carry that in my head.

Q. Yes, the statements show that.

WITNESS. Mr. Lovett, I don't want to go through in detail all these statements——

Mr. KELLOGG. You are not going to.

WITNESS. They have been made up in the office.

Mr. LOVETT. Mr. Mahl, the comptroller, prepared them.

WITNESS. If you want me to verify this, so that I can certify they are the ones, I don't want to do that, but I will try to tell from my own recollection exactly what I know about these transactions.

Q. That is what I want. We do not expect you to remember all the details, of course.—A. It is a long time ago, and whatever financing was done, was done as well as we could do it at that time.

Q. In a general way, then, the $100,000,000 of convertible bonds were used in the first instance to purchase the Southern Pacific and Northern Pacific stock?—A. That is my recollection.

1258 Q. The balance, whatever it was, which it shows to be about $27,000,000, was taken care of by the Oregon Short Line? A. I think that was so.

Q. That $100,000,000 of bonds, with the exception of about $500,000, has been converted into Union Pacific common stock, has it not?—A. That is so.

Q. So we will call that the $100,000,000?—A. Yes.

Q. There is outstanding, in lieu of those bonds, $100,000,000 of Union Pacific common stock, which has been used to purchase stocks in these other railroads?—A. That in round numbers is about right.

Q. The Oregon Short Line, about July, 1902, issued in the first instance its participating bonds, providing for $100,000,000 of those by the mortgage. You recall that?—A. Was that in the first instance? I think the convertible bonds were issued before the participating bonds, were they not?

Q. The convertible bonds were Union Pacific, they were issued first.—A. I see, that is so.

Q. Following that, the Oregon Short Line issued or provided for about $100,000,000 of participating bonds?—A. Yes.

Q. And afterwards, in about 1905, or 1904—which was it?

Mr. LOVETT. 1905.

Q. In 1905, the Oregon Short Line Company issued its refunding bonds to take up its prior participating bonds?—A. Yes, sir; I believe that is so.

Q. So that the participating bonds are not now outstanding, as I understand it, none of them?—A. That is so.

Q. Of those refunding bonds, $100,000,000 were issued?—
1259 A. Authorized.

Q. Authorized, yes.—A. Yes.

Q. Judge Lovett says that in November the balance of the old convertible bonds were redeemed, so that there is the $100,000,000

now all redeemed, and $100,000,000 of common stock all outstanding of the Union Pacific Company?—A. That is so—one minute, if you want to be exact on that. I don't think there is $100,000,000 of stock outstanding.

Mr. LOVETT. No; the bonds were redeemed at 2½ premium, and the stock issued against them.

WITNESS. I think there is just a little less than $100,000,000.

Q. Well, it is within a few hundred thousands of $100,000,000?—A. Yes; I think so.

Q. We will call it $100,000,000 for the purpose of the inquiry; the statements will show it. The Short Line Company provided for $100,000,000 of refunding bonds to take up its participating bonds?—A. Yes.

Q. And of that $100,000,000 of refunding bonds there have been sold through Kuhn, Loeb & Co. to the public $45,000,000 which are outstanding?—A. Well, if the statements so show, of course that must be so.

Q. Well, it is about $45,000,000, as you understand it?—A. Yes.

Q. The balance of those bonds are owned by the Union Pacific, the $55,000,000?—A. I think that is so, too.

Q. So that you have now outstanding $100,000,000, or substantially $100,000,000 of common stock of the Union Pacific and
1260 $45,000,000 of the bonds of the Oregon Short Line which have been issued to purchase stocks in other railroad companies?—A. Well, now; is that so?

Q. Yes; I think so.—A. That $45,000,000; I don't think all of that was used to pay for stock; that was issued for some other purpose, I think, probably.

Q. Well, it may have been used for other purposes, but other moneys of the Short Line were used for buying stock?—A. Well, were they?

Q. Yes, I think so.—A. You have the statement there. My recollection is that they were not, Mr. Kellogg. I think that the participating bonds were used for the purpose of paying the balance of the cost of the Northern Pacific, and then the refunding bonds were issued to take up those participating bonds.

Mr. LOVETT. I suggest these statements about which you are interrogating be offered in evidence and placed in the testimony so that we can follow them.

Mr. KELLOGG. Yes; I will offer them.

Q. It was about $27,000,000 that the Short Line provided for to purchase——

A. I think that is about correct, so that there is about $127,000,000 of either stock or bonds in existence somewhere, the proceeds of which were used to pay for Southern Pacific and Northern Pacific, isn't that right?

Q. Yes; I think so.—A. I think that is right.

Q. After that the Short Line bought $15,000,000 par value
1261 of the Southern Pacific stock in addition to its $75,000,000, didn't it?—A. That is so; yes.

Q. At about $65 a share?—A. If the statement so shows it is so.

Q. After that it bought $18,000,000 of the preferred stock when it was issued by the Southern Pacific, pro rata to its stockholders?—A. That is so; that is, it took its share of whatever it was entitled to under the owning of $90,000,000 of stock.

Q. And the total amount paid for the Southern Pacific stock was in the neighborhood of $83,000,000?—A. Now, let me see; is that what it shows there?

Q. About that?—A. $18,000,000 for the preferred and the balance for the common.

Q. In any event, the entire hundred million of capital stock of the Union Pacific Company has been used to purchase stock in other railways?—A. Now, I don't want you to get it around that way, unless later on you show it.

Q. Is not that a fact?—A. The proceeds of the hundred millions of convertible bonds turned into stock were used for the purpose of purchasing whatever the Southern Pacific report and whatever the Northern Pacific report, plus the sum of the refunding bond. Now, whether we provided, from the issue of those bonds, the money necessary to take up that eighteen millions of preferred stock of the Southern Pacific, I do not know. That is all shown, probably, in the annual reports of those years. We had advanced—one minute now,

Mr. Kellogg. I think you will get the thing worked out.

1262 When we bought the Southern Pacific, we advanced to it for the purposes of improving its property, something like eighteen or twenty million dollars.

Q. Yes, sir.—A. Now then, that was repaid to us by the Southern Pacific at the time they issued their preferred stock. So I think our subscription to the eighteen millions of preferred stock of the Southern Pacific about balanced what they owed us. But whether we issued——

Q. But would not——A. One minute. I do not want to tie it down to just the securities. Whether we issued these refunding bonds for the purpose of advancing that money to the Southern Pacific or not, I couldn't tell you.

Q. You certainly issued those refunding bonds to buy the common stock and the Northern Pacific stock, did you not?—A. The refunding bonds?

Q. I do not mean the refunding bonds. I mean the convertible bonds.—A. The convertible bonds.

Q. And they were converted into common stock?—A. Yes, sir.

Q. So that common stock was issued?—A. Let me go back a moment.

Q. Just a moment now. Common stock was issued and was outstanding for the purpose of purchasing stocks in other railroads?—A. That is what it resulted in.

Q. You have——

Mr. Lovett. One moment, Mr. Kellogg. Let him answer.

Q. Excuse me. Answer in any way you desire.—A. In the first place, my recollection is that we authorized the issue of the hundred

millions convertible bonds, forty millions of which were used
1263 to pay for the Southern Pacific stock purchase. The other sixty millions were held for the purposes of the corporation. That is my recollection. It was not specifically issued at the time it was issued, to pay for Northern Pacific and Southern Pacific.

Q. But your statement here shows that it actually was used, sixty millions, to buy the Northern Pacific stock.—A. You said it was issued for that purpose. It was issued for the purposes of the corporation. It might have been used for any other purpose.

Q. Oh, certainly; but it was used for that purpose, was it not?—A. There is no doubt about that.

Q. Now, more than forty-five millions of the Short Line money was used to buy stock in other companies, altogether?—A. Now, wait a minute. We bought about twenty-seven million. It was used to pay for Northern Pacific and Southern Pacific, was it not, and eighteen millions—you can figure it that way, if you like. Eighteen millions was used to pay for the Southern Pacific preferred.

Q. And a large amount to pay for the common stock of the Southern Pacific, fifteen millions bought after that.

A. In addition to that.

Q. So that forty-five millions of Short Line money was used to buy stocks in other railroads. Is not that true?

A. You use that expression. I want to specifically tie this down to the transaction that we had. We had not in mind the question of the purchase of stocks in other railway companies. We had in mind simply the purpose of acquiring Southern Pacific stock, and afterwards, of acquiring Northern Pacific stock. We had not in
1264 mind, nor did we, I believe, use that money for the purchase of any other railroad stocks. It was not general.

Q. Mr. Harriman, I did not ask you particularly whether the bonds were issued in the first instance for that purpose, but I say more than forty-five millions of this money was used to purchase——

A. To buy Southern Pacific and Northern Pacific. Yes, sir; that is right.

Q. So that if there are to-day outstanding one hundred and forty-five millions of the securities of those railroads, the Union Pacific and the Short Line, more than that amount has been used to buy stocks in other railroad companies?

A. To buy Southern Pacific and Northern Pacific; that is right.

Q. I show you a statement, Mr. Harriman, which was furnished by Mr. Mahl, your comptroller, of the stocks purchased since July 1st and the totals of the cost thereof, added up from his statement.

A. Do you want me to explain that?

Q. I just want to ask you one or two questions. In the first place, I want to offer that exhibit, No. 2, in evidence.

Paper received in evidence and marked "Harriman, Exhibit No. 2." The same is as follows:

HARRIMAN EXHIBIT No. 2.

Statement showing dates of stocks purchased since last annual report, June 30, 1906, to date, and amounts paid therefor.

UNION PACIFIC RAILROAD COMPANY.

ILLINOIS CENTRAL RAILROAD CO.

$18,623,100	par value, capital stock, purchased August 9, 1906, cost.	$32,618,883.53

RAILROAD SECURITIES COMPANY.

890,500	par value, common stock, purchased August 9, 1906, cost.	1,830,408.94
695,500	par value, common stock, purchased August 10, 1906, cost.	1,406,314.91
636,900	par value, common stock, purchased August 16, 1906, cost.	1,289,254.03
1,192,500	par value, common stock, purchased October 23, 1906, cost.	2,409,178.54
3,415,400	Total	6,905,156.42
495,000	par value, preferred stock, purchased August 9, 1906, cost	502,040.00
387,000	par value, preferred stock, purchased August 10, 1906, cost	392,547.00
353,900	par value, preferred stock, purchased August 16, 1906, cost	359,365.79
662,500	par value, preferred stock, purchased October 23, 1906, cost	664,035.63
1,898,400	Total	1,917,988.42

ST. JOSEPH & GRAND ISLAND RAILROAD CO.

$932,200	par value, 1st preferred stock, purchased July 11, 1906...	
1,250,000	par value, 2nd preferred stock, purchased July 11, 1906...	
2,900,000	par value, common stock, purchased July 11, 1906.....	
	Total cost	$2,022,540.00

FRESNO CITY RAILWAY CO.

$495,650	par value, capital stock, purchased July 19, 1906, cost.....	106,410.98

PACIFIC FRUIT EXPRESS CO.

10 per cent subscription to $12,000,000 par value, capital stock, paid Dec. 10, 1906		1,200,000.00

WM. MAHL.

FEBRUARY 15, 1907.

OREGON SHORT LINE RAILROAD CO.

Statement showing dates of stock purchased or acquired by subscription rights since last annual report, June 30, 1906, to date, and amounts paid therefor.

ATCHISON, TOPEKA & SANTA FE RAILROAD CO.

$10,000,000	par value, preferred stock, purchased July 10, 1906, cost.	$10,395,000.00

BALTIMORE & OHIO RAILROAD CO.

32,234,200	par value, common stock, purchased October 9, 1906, cost..	38,801,040.00
7,206,400	par value, preferred stock, purchased October 9, 1906, cost...	6,665,920.00

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

$1,000,000	par value, common stock, purchased July 16, 1906, cost	$1,688,581.26
1,500,000	par value, common stock, purchased August 9, 1906, cost	2,681,735.68
500,000	par value, common stock, purchased August 22, 1906, cost	937,433.30
360,000	par value common stock, acquired September 25, 1906, cost	360,000.00
330,000	par value, common stock, acquired November 12, 1906, cost	330,000.00
	Ten per cent subscription to 18,450 shares preferred and 9,225 shares common stock paid December 31, 1906	276,750.00
		6,274,500.24

CHICAGO & NORTHWESTERN RAILWAY CO.

$2,072,000	par value, common stock, purchased July 13, 1906, cost	$4,320,795.60
500,000	par value, common stock, purchased July 16, 1906, cost	982,878.34
2,572,000		5,303,673.94

NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO.

$1,640,000	par value, capital stock, purchased July 13, 1906, cost	$2,490,317.12
5,830,000	par value, capital stock, purchased July 16, 1906, cost	8,224,998.75
2,000,000	par value, capital stock, purchased July 17, 1906, cost	3,000,000.00
1,768,125	par value, capital stock, purchased July 18, 1906, cost	2,593,714.06
400,000	par value, capital stock, purchased December 6, 1906, cost	541,487.50
400,000	par value, capital stock, purchased December 7, 1906, cost	536,187.50
2,247,620	par value, capital stock, acquired December 26, 1906, cost	2,247,620.00
14,285,745		19,634,324.93

NORTHERN PACIFIC RAILWAY CO.

Five per cent subscription to 24,916 shares capital stock paid February 1, 1907	$124,500.00

WM. MAHL.

FEBRUARY 13, 1907.

Q. That, I will explain, Mr. Harriman, is the additions made from this statement, but not made by Mr. Mahl, and subject to correction as to their accuracy.

A. I think they are probably about right.

Q. From that statement it appears that the cost to the Union
1265 Pacific and Short Line companies of stocks acquired since July 1st, 1906, amounts to approximately $131,000,000.

A. It appears so.

Q. Is that substantially right?

A. I think that is about right.

Q. Is it not a fact, Mr. Harriman, that since the purchase of those stocks the market price thereof has decreased about eleven million dollars?

A. Possibly.

Q. What do you think about it?

A. I have not figured it up. Now, Mr. Kellogg, let me explain to you, will you?

Q. Yes, sir.

A. In the first place, we had, as the result of the Northern Pacific purchase, $82,000,000 of Northern Securities stock at a cost of about $79,000,000. Our annual report, our statements, all show that. Then we were forced to take, by the decision of the Supreme Court unjustly—it may have been legal—Great Northern which we did not want, and a lesser amount of Northern Pacific that we had deposited with the Northern Securities, and for which we received the Northern Securities stock. At the time that stock, the Great Northern and the Northern Pacific, was given to us—forced upon us—it had a market value of about $100,000,000. I will go back just a minute. We had subscribed in the meantime to three millions of Great Northern stock, which had been offered to the stockholders, making the total cost of whatever Great Northern and Northern Pacific we had, about $82,000,000. Mr. Kellogg, if you will follow me, I can make this plain.

Q. I am listening to you, Mr. Harriman.

1266 A. And that, when we took over the Great Northern and Northern Pacific, in exchange for our Northern Securities stock, was worth in the market about one hundred million dollars. Instead of disposing of it at that time, we held it until the market price increased in value somewhere to near one hundred and forty-five million to one hundred and fifty million dollars. We sold some of it gradually as it went up, but at that value the returns from the Northern Pacific and Great Northern, were less than 3 per cent on the stock that we held. Therefore we concluded that it was better to sell those stocks and invest the same money in other securities, that would give us greater returns. So that, following out that line, we had sold enough of those stocks to realize $116,000,000. Are you trying to check that up?

Q. Yes, sir.

A. We reinvested that in securities listed here other than Baltimore & Ohio, at a cost of about $85,000,000. We have on hand, remaining in the treasury of the Union Pacific, or the Oregon Short Line, Northern Pacific and Great Northern stock, at the present market value of about $30,000,000. So that would make, with $116,000,000 of the value sold, and with that we have on hand, about $146,000,000. The Baltimore & Ohio stock purchased has not to be paid for until March and September.

Q. I hear you, Mr. Harriman.

A. Now, the difference between the cost of the other stocks, $85,000,000 and $116,000,000 already realized, is about $21,000,000. Is that right, or is it $31,000,000?

Mr. MAHL. $31,000,000.

A. $31,000,000. The stock of the Great Northern and the

1267 Northern Pacific we still have on hand, if sold at the present prices, would make that $61,000,000 received in excess of the amount already invested and paid for.

Q. Is that all you wish to say?

A. Now, one minute. We have to pay for Baltimore & Ohio, $45,000,000.

Q. $15,000,000.

A. So that the proceeds of the Northern Pacific and the Great Northern would realize something like $17,000,000 in excess of the cost of all the securities purchased; and the income from those securities, instead of being as it was in the case of the Great Northern and Northern Pacific, about three million and a quarter, or three million and a half dollars, will approximate six million and a half dollars. So that if we had held Great Northern and Northern Pacific, we would have an investment realizing less than three million and a half dollars, and the market value would have been reduced very much more than the eleven million or ten million which you refer to as the difference between the market price of the securities and the market price of the Great Northern and Northern Pacific.

Q. Then if Northern Pacific and Great Northern maintain their present market price, you estimate your profits in that, at about $61,000,000?

A. Something like that.

Q. But if it continues to go down, and the other stocks that you have bought continue to go down, you may lose all your profits?

A. That is possible, but at the same time, if we had held up to this time—we are not infallible.

1268 Q. No, sir.

A. We make mistakes.

Q. Certainly.

A. I have made many mistakes in my life and I presume you have, but we are using our best judgment. We had this investment in securities. The hundred million of stock was issued for the purpose of paying for those investments. We realized on those investments to the best advantage we could and reinvested in the securities which we thought were of the highest class, and the most interest to the Union Pacific.

Q. Then the investment of the Union Pacific in stocks depends, like any other stock investment concern, on whether the stocks go up or down, does it not?

A. I do not think so. I think it is a question of income. It is not always a question of capital, or a question of value.

Q. You have been selling stocks of the Northern Pacific, have you not?

A. What do you say?

Q. You are selling Northern Pacific stocks now?

A. Who says we are?

Q. You have been this winter, have you not?

A. I think we have.

Q. I show you a statement——

A. Yes; we have sold some stocks this winter, or last autumn, within the last few months, I don't know just when.

Q. I would like to ask a few questions about the purchase of Southern Pacific stock. Is that one of the stocks which you said yesterday was purchased for control as a permanent investment?

A. I did not say it was purchased for control.

Q. Well, what was it purchased for?

A. It was purchased for the purpose of getting a dominat-
1269 ing interest in the Southern Pacific Company.

Q. It acquired the dominating interest by that purchase?

A. By that purchase; yes, sir.

Q. Who was in control and management of the Southern Pacific Company prior to the acquisition by the Union Pacific?

A. The stockholders.

Q. Well, that is quite so, but who was the president, Mr. Huntington?

A. No, I think not—prior to our purchase?

Q. Yes.

A. Mr. Hayes.

Q. Well, shortly prior to your purchase, Mr. C. P. Huntington died, did he not?

A. Yes; I don't remember; I think it was about six months.

Q. Prior to his death, Mr. C. P. Huntington for many years had been in control of the Southern Pacific road, had he not—that is, he had been the head?

A. Yes, for many years. Mr. Stanford had been president, you know, at one time.

Q. But for some years past Mr. C. P. Huntington had been the head of the Southern Pacific system?

A. Yes.

Q. Now, as it appears, the first purchase was 750,000 shares and afterwards 150,000 shares, making 900,000 shares, which the company owned prior to the issue of the preferred stock—that is, either the Union Pacific or the Short Line?

A. Yes.

Q. I refer to it as Union Pacific.

A. Yes.

Q. Why did you buy just a little less than the majority?

A. Well, I presume that we thought it was not necessary to buy a majority.

Q. You could control it just as well with a minority?

A. Undoubtedly.

1270 Q. In other words, owning just a minority of the stock——

A. That is, for our purposes it was just as good to us.

Q. As a controlling interest?

A. Yes, it was a dominating interest, and a very large outside interest, as copartners.

Q. A large amount of this stock was bought from the Huntington estate, wasn't it?

A. I think it was—no, wait a minute——

Q. Did you carry on the negotiations for the purchase?

A. I helped carry them on.

Q. Didn't you make the arrangement for the purchase for the Union Pacific?

A. No, not for the Union Pacific.

Q. Well, the Union Pacific and Short Line.

A. No, from the Huntington estate, I made no arrangement for any of our companies.

Q. Was all of that stock purchased from the Huntington estate?

A. The whole 900,000?

Q. The whole 750,000 shares.

A. I think not.

Q. I notice that your statements show that since that time, since the acquisition of the other 150,000 shares in 1902, I believe, that at all times since either the Union Pacific or the Short Line has owned 900,000 shares of the common stock according to the statements. Now, where did you get the 300,000 shares of the stock that you sold to William Rockefeller on March 13, 1903? Is that a part of the 900,000 shares?

A. Yes, sir.

Q. I notice that stock was sold pursuant to a resolution, March 30, 1903, and purchased back from Mr. William Rockefeller on November 12, 1903. Is that your recollection of it?

A. That is my recollection.

1271 Q. (Handing paper.) I show you a letter written to you by Mr. Rockefeller.

A. That is right.

Q. This is signed William Rockefeller: "Referring to the agreement entered into between you and me on March 30th, 1903, in respect to the 300,000 shares of the capital stock of the Southern Pacific Company, I beg to state that I should be glad to have you take over the stock now instead of waiting until the first day of May, 1904, as originally contemplated." Now, what was the agreement that contemplated the Union Pacific taking the stock back?

A. It was a reciprocal agreement between Mr. Rockefeller and myself, in that he was to purchase that stock and have the privilege on May 1st, the year following—what was the date of that letter?

Q. November 5th, 1903.

A. Well, he was to have the privilege on the 1st of May, 1904, to deliver the stock back to us at the same price at which we sold it to him.

Q. Then it was——

A. And a reciprocal agreement on our part that we were to have the privilege to take it back.

Q. Then it was a sale with a condition, it was a sale by the Union Pacific Railroad Company or the Short Line Company, with a condition that you were obliged to take it back if Mr. Rockefeller asked you to, on May 1st, 1904, at the same price with interest.

A. With interest, and I think a commission of one per cent.

Q. With interest and a commission of one per cent?

A. I think so.

Q. Which would be $300,000?

A. Yes, I think so.

Mr. LOVETT. Mr. Harriman is mistaken about the rate of commission.

1272 Q. I think that is so. Five-eighths of one per cent.

A. Five-eighths of one per cent.

Q. Now, then, if the Short Line Company was responsible, Mr. Rockefeller assumed no obligation, and merely had a conditional title to the stock, is not that true?

A. And paid for it.

Q. Only paid for a part of it, didn't he?

A. He gave good collateral and a note for the balance. He paid $6,000,000 and gave his note and marketable collateral for the security of the note for eleven millions and odd hundred thousand dollars.

Q. I notice by your annual report of June 30, 1903, after this stock was sold to William Rockefeller, you report that the Union Pacific Company and its auxiliary company, the Short Line, own $90,000,000 or 900,000 shares of the capital stock of the Southern Pacific Company. Is that correct?

A. Yes, of course.

Mr. LOVETT. What was the date when that report was issued?

Mr. KELLOGG. For the year ending June 30, 1903.

Mr. LOVETT. What was the date of the report?

Mr. KELLOGG. Stocks owned June 30, 1903. By this report it appears on page 25, stocks owned June 30th, 1903——

WITNESS. That is all right. Don't show it to me; it is undoubtedly correct.

Q. Well, you considered you owned it at that time, didn't you?

A. That whole transaction of the 300,000 shares of stock sold to Mr. Rockefeller was a protective measure, pure and simple. There had been a syndicate or a pool formed in Wall Street to

1273 speculate in Southern Pacific stock, and they were said to have acquired about 300,000 shares. They had appealed to the stockholders and had appealed to the courts and had tried to get enough proxies with their stock to prevent us from continuing in the management of the Southern Pacific, and to force in some way a distribution to the stockholders, so that they could get a market for and sell their stock out to advantage. We were fearful that they might get a temporary injunction, and prevent us from voting on the whole 900,000 shares of stock, and in order to protect us against such a condition, we took this method of disposing of enough stock, we thought, that would enable us, with the proxies that we might obtain from the other stockholders, to control the election as against this speculative syndicate. It was purely to protect the interests of the Union Pacific or Short Line stockholders.

Q. That is, if it was necessary to show that somebody else owned it——

A. And in fact there never was any election for the year 1903. There was a temporary injunction obtained, and it was in the courts until some time in the autumn of 1903.

Q. Well——

A. Now, one minute and I will explain it all to you.

Q. All right, I want it all.

A. The annual report of the Southern Pacific was not approved by its Board of Directors until after November 12, 1903. It has been the custom of the comptroller to hold its books open until after the annual report has been approved by the Board of Directors. Now then, when this stock was returned in November, on November 12, some six months prior to the time of the agreement at which
1274 Mr. Rockefeller was to have the right to return it to us, the comptroller made his entries as of June 30, 1903, and that was the reason that the 300,000 shares was not shown to have been disposed of during that year. I believe that explains it.

Q. Well, this is the Union Pacific——

Mr. Lovett. Mr. Harriman said a temporary injunction was granted. As a matter of fact, an application was made for an injunction, and it was set down for hearing, and the court required that the election should be postponed pending the decision of the question. The injunction was not actually granted; subsequently it was refused, but it had been set down for argument.

A. And we wanted to get 300,000 shares of stock in the ownership of somebody who would act against the attempt of this speculative pool to control the property.

Mr. Kellogg. Well, the decision of the court on that injunction, as I recall it, Mr. Lovett, was rendered on the 3rd of April, 1903, refusing an injunction.

Mr. Lovett. Yes, and an appeal was taken, and pending the appeal——

Witness. It was pending the appeal, and then it was settled some time in the autumn of 1903, the whole matter was disposed of.

Mr. Kellogg. Well, it is the report of the Union Pacific that I refer to, in which Mr. Mahl reports by a letter to you on October 27, 1903, that on June 30, 1903, the Union Pacific or Short Line owned 900,000 shares of this common stock.

Mr. Lovett. The report is dated November 12.

1275 Mr. Kellogg. Oh, certainly, but the report shows the stocks owned on June 30, 1903.

Witness. I know. I have just explained that to you that he made his entry as of June 30, 1903.

Q. Well, in any event, the object of selling the stock was to enable the Union Pacific, if it was necessary in that suit, to show that it did own that 300,000 shares?

A. Undoubtedly.

Q. And it was necessary, to show that it did own it, that is, to have a string on it, so you could get it back?

A. No, it was not.

Q. As a matter of fact the sale——

A. No, no; you can not put intention at this late day on the part of the Union Pacific Railroad. It was purely for the purpose of getting that stock into the ownership of somebody who would act against this pool who were trying to get control of the Southern Pacific Company for speculative purposes.

Q. Let me inquire into that for a moment. That suit was brought by a man by the name of Taylor, was it not?

A. Was that the suit?

Q. He was connected in some way with Mr. Keene, a gentleman well known in Wall Street, I believe?

A. A son-in-law.

Q. A son-in-law of Keene?

A. Yes.

Q. I am not familiar with Wall Street——

A. What?

Q. Well, Mr. Taylor claimed, didn't he, that he was a stockholder in the Southern Pacific Company, in that suit?

A. I believe he did.

Q. And he was a stockholder, was he not, or Mr. Keene?

A. He was a stockholder of record.

1276 Q. Yes, he claimed that the control by the Union Pacific of the Southern Pacific was unlawful, because it was the control of a parallel and competing line, which the stockholders had a right to object to, did he not?

A. Did he do that?

Q. That is my recollection; is that true?

A. I have forgotten. Well, he did not prove it, anyway.

Q. He did not get jurisdiction of the Union Pacific, because it did not live down at Beechmont, Ky.

A. Is that the reason?

Q. That is the reason.

A. Well, I have never been there. I don't know what sort of a place it is.

Q. I don't believe anybody else ever has. I think that it is the headquarters of the Southern Pacific Company, is it not?

A. Yes.

Q. Now, in order to show that the Union Pacific was not controlling a parallel and competing line you sold that stock to Mr. Rockefeller, didn't you?

A. No, sir.

Q. That was not the reason?

A. No, it was not.

Q. Was it not transferred to him in order to enable you to show that you did not own enough stock to control the Southern Pacific?

A. No, sir.

Q. Did you not deny in that suit that you did control the Southern Pacific?

A. I don't remember that. Did we?

Q. Well, didn't you admit that you controlled the Southern Pacific—which is it?

A. I don't remember.

Q. But you did control it, didn't you?

A. Practically.

Q. For that transaction, without Mr. Rockefeller assuming any particular responsibility, you paid him $187,500 commission. Is that true?

1277 A. We paid him $187,000 for paying us $6,000,000 and giving us his obligation secured by good collateral which we could have used for the balance, about an $18,000,000 transaction, for about fifteen months.

Q. But he had the obligation of the Short Line Railroad Company to take that stock back at the same price?

A. What are you trying to prove, that that was too large a commission?

Q. Oh, I don't know. I want to find the facts.

A. If you had had the money, would you have assumed it for less?

Q. I can not imagine having that amount.

A. We thought—but you want to have it, that is the trouble.

Q. Well, we will pass that transaction. Now, Mr. Harriman, it appears in the list of stocks which you bought for the Union Pacific Railroad Company. I notice that on July 30 the Oregon Short Line Railroad Company purchased $10,000,000 par value of the Atchison, Topeka & Santa Fe Railway Company for $10,365,000. You recall that, substantially?

A. Yes, etc; no doubt about that.

Q. What was the object of purchasing that stock?

A. To invest some of the money that we had on hand.

Q. The Santa Fe is a parallel and competing line with the Union Pacific, is it not?

A. Undoubtedly, I am sorry to say.

Q. And prior to that time you had made arrangements with Mr. Ripley for a representation on the board of the Southern Pacific, hadn't you?

Mr. MILLARD. Whom do you mean by "you"?

Mr. KELLOGG. You, Mr. Harriman, I mean.

A. Yes, myself and some of my associates.

1278 Q. In 1904 did you have an interview with Mr. Ripley about obtaining a representation on the Santa Fe board?

A. During 1904?

Q. Yes.

A. I presume it was. When were the representatives that we suggested elected? Have you got a record of it?

Q. Yes.

A. I don't think it is material. I had several interviews with both Mr. Morawetz and Mr. Ripley; mostly with Mr. Morawetz.

Q. State the substance of your interview and arrangements with Mr. Ripley, please?

A. With Mr. Ripley and Mr. Morawetz, both, do you mean?

Q. Yes, Mr. Ripley and Mr. Morawetz.

A. It was mostly with Mr. Morawetz.

Q. Mr. Morawetz represented the Santa Fe?

A. Yes, he was chairman of the board.

Q. And Mr. Ripley was president?

A. It was in substance that we were to try to establish a better relationship between all the railroads, in the line that we should deal more frankly with each other, more publicly and more frankly, and not operate our lines for the purpose of destroying each other, but for the purpose of helping each other, and for developing the territory served by each, and to that extent I even went so far with Mr. Morawetz as to tell him that as far as the Southern Pacific was concerned, I would be willing to even put him on the executive committee of the Southern Pacific so that he might know what our intentions were, if he chose to. After considerable talk on those lines they concluded that they would give representation—not to
1279 the Union Pacific Railroad—or I can not say that it was representation for stock that was owned by myself and some of my associates, but that they would elect to the Atchison board two men that were suggested by us, and to that end elected Mr. Rogers and Mr. Frick.

Q. Both of whom were directors of the Union——

A. Yes, I think they were. Now, then, the effect of that has been, so they tell me, that they have acquired two of the best directors that they have ever had. So far as my knowledge of the Atchison is concerned, through the information that has been conveyed to me by either of those men, it has been practically nil, in fact so much so, that when it was—I am afraid you are getting his mind off of this, Mr. Severance.

Q. Go ahead, Mr. Harriman.

A. So that when they had concluded in the Board of Directors to issue $98,000,000 of convertible bonds, and to obtain the consent of the stockholders to increasing the stock, I did not know anything about it until it was announced in the newspapers.

Q. Well, this establishing closer relations and friendly interests is what is commonly known as community of interest?

A. I never invented that; I don't like the term.

Q. I thought you invented it.

A. No, I never invented it.

Q. I would like to find the inventor.

A. I call it a common interest; we all have a common interest.

Q. Now, then, was it stated at that time by you that gentlemen connected with the Union Pacific had acquired large interests, to the extent of over $30,000,000 in the stock——

1280 A. I don't remember that we said how much we had acquired, but that we personally had acquired large interests in the Atchison stock.

Q. Was that stock acquired by you and Mr. Frick and Mr. Rogers before Mr. Rogers and Mr. Frick were elected to the Board?

A. Oh, yes, a long time before.

Q. And that stock amounted to over $20,000,000, as Mr. Ripley stated, about one-seventh of the capital stock?

A. Did Mr. Ripley state that?

Q. That is my recollection.

A. I don't know how he knew; I don't know that I ever told him.

Mr. SEVERANCE. He said he looked you up.

WITNESS. It was only an estimate on his books.

Mr. LOUDON. I think Mr. Ripley testified that he did not know how much, but he assumed it was $25,000,000 to $30,000,000.

WITNESS. Suppose he did; that does not bear on this question.

Q. Well, had these parties acquired from $25,000,000 to $30,000,000?

A. I don't know that you can inquire into that.

Q. Since that time and until June 10, 1906, the Union Pacific itself as a company, or the Short Line, has acquired $10,000,000 of this stock?

A. That was an investment pure and simple in the preferred stock.

Q. Was that a part of the stock which had been previously acquired by you, Mr. Rogers and Mr. Frick?

A. I think not——

Mr. MILBURN. No——

1281 Q. Well, do you know it was not?

A. Well, I received a shock; I don't think I can answer.

Mr. KELLOGG. I suggest you gentlemen let Mr. Harriman go ahead, and he will clean this whole thing up.

Q. Do you know that it was not, Mr. Harriman?

Mr. MILBURN. Mr. Harriman, I am going to draw, as far as you will allow me, the lines I drew yesterday. I think this question is within the objections I made at that time, and I would like the same proceedings taken in reference to this question as were taken to the other.

Mr. SEVERANCE. Do you want to withdraw the answer?

Mr. MILBURN. We will let stay what is in, but I do not think it is proper to pursue it further.

Q. Of whom did the Union Pacific buy that $10,000,000 of stock?

A. Kuhn, Loeb & Co.

Mr. KELLOGG. Was it or any part of it at that time owned by any of you three gentlemen?

Mr. MILBURN. That I object to.

The CHAIRMAN. You object to his answering the question on the same grounds as stated to the similar question asked yesterday?

Mr. MILBURN. Yes, and could we have the record contain the same proceedings, without going over it?

The CHAIRMAN. The objection is overruled and the witness is directed to answer.

Mr. MILBURN. Yes, and the witness declines to answer on the grounds assigned to a similar question, yesterday, as repeating what is on the record.

1282 The CHAIRMAN. Precisely.

Mr. MILBURN. That is under-stood.

Mr. KELLOGG. Is that your position, Mr. Harriman?

WITNESS. Absolutely.

The CHAIRMAN. Just one moment, Mr. Kellogg. It appears, Mr. Harriman, that for reasons stated by you, or under the circumstances stated by you, that two gentlemen who were then directors of the Union Pacific were elected directors of the Santa Fe?

WITNESS. Yes.

By the CHAIRMAN:

Q. Was there any corresponding arrangement by which one or more men who were identified with the Santa Fe were elected directors of the Union Pacific?

A. No, sir; it was purely this question that I suggested to Mr. Morawetz that we sought to overcome.

Q. The Union Pacific then got representation ——

A. No, sir; no; the Union Pacific did not get representation.

Mr. MILBURN. You know Mr. Ripley testified that they would not have a Union Pacific representative on their board.

Q. That depends perhaps on what is meant by representative.

A. I don't think that any one ever asked them to.

Q. My recollection was that Mr. Ripley objected to having an executive officer of the Union Pacific, or one active in its management, elected as a director, but of course he perfectly understood that Mr. Rogers and Mr. Frick, to whose election to the directory he assented, had been directors of the Union Pacific, and he

1283 expected that they would continue to be directors of the Union Pacific. I am simply inquiring whether there was any corresponding arrangement by which the directors of the Santa Fe were elected to the directory of the Union Pacific.

A. No, sir.

Q. Mr. Harriman says there was no such thing.

A. No, sir.

Q. So that in point of fact, up to this time, there is no officer or director of the Santa Fe, who is also a director of the Union Pacific, the Southern Pacific or the Atchison?

A. I think not.

By Mr. KELLOGG:

Q. Mr. Harriman, Mr. Rogers and Mr. Frick were directors of the Union Pacific?

A. I believe they were.

Q. They had accumulated, as Mr. Ripley said, together with you, a large amount of Santa Fe stock?

A. Who said they had?

Q. Mr. Ripley.

A. How did he know?

Q. He said you said so.

A. I think not.

Q. Is that true?

A. Did Mr. Ripley say that they had——

Mr. LOVETT. He so testified.

WITNESS. Mr. Ripley probably knew better than I did. Mr. Kellogg, I am not going to answer that question, because I do not think you have any right to ask me whether they or anybody else had any interest in Atchison or Union Pacific with me.

Q. I am trying to get at what this harmonious arrangement was between the Santa Fe and the Union Pacific.

A. Who said there was a harmonious arrangement?

Q. You said so to Mr. Ripley and Mr.——

A. I said we ought to have franker methods of dealing with our company.

1284 Q. Yes; get along in harmony with them.

A. Get along in harmony with them.

Q. And that method was accomplished by having common directors?

A. Not common directors. We have no directors of theirs in our company.

Q. Is there no director of the Santa Fe——

A. I said myself and some of my associates had large interests in the Atchison road, and there ought to be somebody in there who would properly represent not only our stock but the stockholders of the Atchison road, to the end that we might have a better understanding and a franker dealing between our corporations, if you like. In other words, I had a common interest, I might say—an interest in Union Pacific and an interest in Atchison myself.

Q. And the greater the common interest you gentlemen had in the two lines, the less competition?

A. Not necessarily. I wish it were so.

Q. You think you have not reached the millennium on the Pacific Coast yet?

A. Nor anywhere else.

Q. Did you think it proper for directors of the Union Pacific to be on the Board of Directors of a parallel and competing line, the principal competitor of the Union and the Southern Pacific?

A. I undoubtedly thought that those men were proper to put in the Atchison board, otherwise I would not have suggested it.

Q. They were active directors of the Union Pacific, were they not?

A. They may be active directors in some other companies.

Q. Were they active directors in the Union Pacific?

A. I have told you that already.

1285 Q. Yes; very prominent directors.

A. Yes; they were prominent directors. Their personality would make them prominent wherever they were.

Q. Certainly. They were also active directors in the Santa Fe, were they not?

A. I believe they were just the same; they would be wherever they are.

Q. Now, which interest did they represent the most, the Union Pacific or the Santa Fe?

A. Where?

Q. In the meetings.

A. In which meetings?

Q. When questions of conflict came up between the Union Pacific and the Santa Fe, which did you expect those gentlemen to represent?

A. They would represent the interest of the stockholders of the company for which they were acting.

Q. At the time?

A. At the time.

Q. Under that arrangement, under this harmonious——

A. Now, you are inventing a phrase, "harmonious." That is worse than "community of interest."

Q. What will I call it?

A. I don't know.

Q. Under this arrangement for closer——

Mr. MILBURN. Frank relations.

Q. Oh, yes; more frank relations. Under this frank understanding between the Santa Fe and the Union Pacific, you gentlemen joined in the ownership of a railroad in Northern California, did you not?

A. They had nothing to do with it whatever.

Q. That has been done since this frank arrangement was made?

A. It was not because of it. I should say it was not done because

1286 of any representation on the Board of Directors of persons who were also directors of the Union Pacific. In fact, so far as I know, they had nothing to do with it—those people.

Q. Under that arrangement, instead of the Santa Fe building into and having a railroad into the territory of the Union Pacific and Southern Pacific, you made an arrangement with the Santa Fe Company for a joint alternate shuttlecocking management like the Alton, did you not?

A. Now you are inventing another phrase. There is no shuttlecock about it. It is purely and simply a business transaction for the control of important properties, and for the development of important properties, and for the development of territory tributary to those properties.

Q. It is a joint ownership?

A. It is a joint ownership of the Santa Fe and Union Pacific north of San Francisco, leading into Mendocino County.

Mr. MILBURN. Southern Pacific you mean, instead of Union Pacific.

WITNESS. Southern Pacific.

Q. Well, Southern Pacific, it is all one.

A. I wish it were all one. I hope you will help us to get legislation some time so that it will be all one. That is where we will get some day.

Q. It is pretty nearly all one man. Under that arrangement there is an alternate arrangement with the Santa Fe?

A. Yes; you might call it a joint management.

Q. So competition in that territory has been eliminated?

A. There never was any.

Q. There never was any?

A. There never was. Wait a moment, Mr. Kellogg. Don't
1287 get a false impression about that. The Santa Fe had interests up in Mendocino County, some 150 miles north of the terminus of the California & Northwestern road, which was owned by the Southern Pacific Company, and it was not a question of construction of parallel lines so much as it was a question of traffic or trackage arrangements between the lines north of the terminus of the California & Northwestern, and that road itself, whether a joint ownership was not better than a traffic or trackage alliance.

Q. There is a contract for the joint control of that road, is there not?

A. Yes; there is, and I am quite proud of it. We made great sacrifices to have that done.

Q. That is one railroad which is jointly operated by the Santa Fe and the Union Pacific?

A. It is not built yet.

Q. Well, it is to be.

A. So far as the California & Northwestern is concerned, it is under joint control.

Q. And when constructed, it is to remain under joint control?

A. I hope so.

Q. The San Pedro Railroad, from Salt Lake to California, is also under joint control, between the Union Pacific and Mr. Clark?

A. Yes; but we built that road jointly with him.

Q. I think he claims he built it.

A. We built that jointly with him, I say.

Q. Jointly with him. You sold him 512 miles belonging to the Short Line Company, did you not?

A. For the purpose of enabling the line between Salt Lake and Los Angeles to be completed quicker than it otherwise could have been.

1288 Q. That is, you contributed to that line of railroad 512 miles, is that correct?

A. Undoubtedly.

Q. Mr. Clark contributed some money and some more railroad that he had been building?

A. Yes; some insignificant lines.

Q. And you put into it a railroad, and the Union Pacific or the Short Line and Mr. Clark owned the securities jointly?

A. Yes.

Q. You provided for a joint arrangement?

A. Yes, we developed a new railroad.

Q. And you brought the Southern Pacific into that with a contract?

A. And opened new avenues of traffic.

Q. Yes, but they all lead to the same place, the Union Pacific?

A. I hope so. The Union Pacific is quite capable of doing it.

Q. Competition with the San Pedro line is eliminated there?

A. There never was any competition until we built it.

Q. There is not now, is there?

A. Isn't any what?

Q. Any competition now.

A. Between what?

Q. Between the San Pedro road and the Southern or Union Pacific.

A. I should say there was; it is a continual source of annoyance.

By Commissioner LANE:

Q. Let me ask Mr. Harriman a question. Do you fix the rates on the Union Pacific?

A. No, sir.

Q. Does the Board of Directors fix the rates on the Union Pacific?

A. No, sir.

Q. Who fixes the rates?

A. The traffic manager.

Q. The traffic manager?

A. The various traffic managers.

Q. Upon what basis are those rates fixed? Upon the basis of capitalization?

A. Upon the conditions that exist in the movement of commodities at the time.

Q. What does capitalization represent in a railroad?

A. What do the traffic officers know about capitalization? It is purely a business transaction between the shipper and the carrier, and the traffic officers have to make a rate that will move that traffic, without regard to how much capital there is out on that railroad. I do not suppose there is a traffic officer in the country who takes into consideration what the capital of his railroad is, when he makes a traffic contract.

Q. Then do I understand you to say that when a rate is fixed by a traffic director, that rate is fixed irrespective——

A. Or a traffic manager, or a freight agent.

Q. Or a traffic manager or a freight agent—that that rate is fixed independent of the return it will yield upon the capital?

A. I believe that is absolutely so.

Q. So that capitalization, when we come to the fixing of a rate, has absolutely nothing whatever to do with it?

A. It has, in a general way, but in the general management from day to day of the railroad, the traffic men know little or nothing about the capitalization of the road. They have to make their contracts to move the traffic under the conditions that then exist, and make a rate that will move it.

Q. Are we justified, then, in excluding from consideration——

A. I don't believe you are.

Q. In the making of a rate?

A. I don't believe you are, in regulating the rates generally.

1290 Q. Now, what does capitalization represent?

A. It represents the investment in the property.

Q. The investment in the property?

A. Yes, sir.

Q. Do you mean to say, then, that the capitalization represents the actual value of the property in use for transportation purposes?

A. Well, the actual value of the whole property, whether it is actually in use for the specific purpose of moving traffic from one point to another. I don't quite catch what you mean.

Q. I mean, is it the property that is actually used as a railroad property, or is it all of the properties that the railroad company may have, or is capitalization based upon earnings?

A. It is very largely both. I don't quite catch it yet.

Q. What is the basis upon which you capitalized the Union Pacific Railroad Company?

A. I didn't capitalize the Union Pacific Railroad Company.

Q. You added $100,000,000 of convertible bonds, did you not?

A. Yes, for a specific purpose.

Q. What was that purpose?

A. To purchase the Southern Pacific and the Northern Pacific.

Q. You did that upon the basis of the earnings of the Union Pacific, did you not?

A. That was the basis of the credit of the Union Pacific, that it could continue to pay interest on those bonds even if it had to stop paying dividends on its stock.

Q. You found it was possible to extend that credit $100,000,000 more than it had been theretofore?

1291 A. Yes; and it might have jeopardized the dividends on the Union Pacific stock itself. That is, we subrogated the stock to the bonds. If the Northern Pacific and the Southern Pacific had made no returns from their stock, no dividends, the income of the Union Pacific would have had to be used to pay the interest on those bonds, and to that extent it would have had to be deducted from the amount available to pay dividends on its stock.

Q. But, as a matter of fact, that event did not transpire?

A. That event did not transpire in this instance.

Q. You did take the $100,000,000, or a portion of it, and you bought the Southern Pacific, a competing line?

A. No, a connecting line.

Q. You object to the word "competing?"

A. I do, absolutely.

Q. You bought the Southern Pacific. Now, it was by virtue of the Union Pacific's revenue and ability to earn that you did that?

A. The credit of the Union Pacific, based on its earnings.

Q. Its earnings were based, in turn, upon its receipts, were they not?

A. Upon its traffic.

Q. So that by the raising of rates, you could increase the returns of the Union Pacific?

A. But that never has happened.

Q. Or by the lowering of rates you might lower the returns of the Union Pacific?

A. Yes. We had $200,000,000 of stock behind these bonds, on which we were paying dividends, preferred stock and common stock, $100,000,000 of each. Therefore, in so far as we issued those
1292 bonds, we jeopardized the dividends that might be paid on those stocks.

Q. Now, if you uphold rates, hold your rates high and get a large return from the Union Pacific, and by virtue of that large return from the Union Pacific, showing a large earning, you are enabled to higher capitalize the Union Pacific and borrow more money upon it, and by borrowing more money are able to reach out and buy other railroads, then fundamentally it is upon the basis of the rate you are fixing on the Union Pacific?

A. Not altogether. It is also on the basis of the returns which we may receive from the investment in those other securities. It is not altogether the rates on the Union Pacific. For instance, what is going to become of the six and a half million dollars income which we receive from the investments in these stocks which has already been shown, and which goes into the treasury of the Union Pacific? It doesn't come from its traffic.

Q. I would like your opinion upon this, Mr. Harriman: Why should the Union Pacific, as a railroad, be empowered or have the right, out of its credit as a railroad, to buy other railroads?

A. It depends upon what that other railroad is.

Q. No, it does not.

Mr. MILBURN. That, the State has conferred.

Comr. LANE. There is no man more eminent than Mr. Harriman in the railroad world, and I would like to get his judgment on that proposition.

A. Mr. Lane, it is a pretty broad question and pretty hard to answer it offhand. It would require a great deal of deep
1293 thought. If we had not had the power to buy the Southern Pacific with the credit of the Union Pacific, the territory of the Southern Pacific would have been ten years behind what it is

now. If we had acquired the Northern Pacific, the Northern Pacific territory would have been ten years ahead of what it is now.

Q. Then you think also, if you acquired the Santa Fe you might improve that?

A. That is a very different question. I believe we could. I believe under proper regulation and proper statutes, which would enable railroads to combine and establish lines upon which traffic could be moved at the least cost, we could reduce our rates; but just so long as we are prohibited by law from agreeing among ourselves without the danger of being sent to State prison, you have this chaos that now exists. Just as soon as we can get laws that will enable us to combine and establish these lines, so that we can conduct the traffic on the lines of least resistance, at the least cost, we will then be able to reduce the charge, and also to increase wages or to stand the increase in wages, and not before.

Q. Do I understand your reasoning to be this: that inasmuch as there is some law which prevents your combining with other railroads, you, upon the strength of the earnings of one railroad, will extend and buy other railroads?

A. I didn't say we couldn't combine. We could not have consolidated with the Southern Pacific without acquiring all its stock, and there might have been a doubt about our being able to consoli-
1294 date. We could not consolidate with the Northern Pacific without acquiring all its stock. We had to have the action of the stockholders.

Q. What is the law that you would want, that would bring about this beneficial result?

A. A law that would enable corporations to make contracts between themselves under proper regulations, just the same as individuals have the right to make contracts; contracts that would be standing and enforceable for a long term of years, so that it would enable railroads to establish these lines upon which traffic could be moved at least cost, taking various parts of the lines as they now exist. If there had been such a right, the purchase of the Burlington by the Northern Pacific and the Great Northern might not have taken place.

Q. Would the purchase of the Southern Pacific by the Union Pacific have taken place?

A. It might not have. We might have made a contract between the Southern Pacific and the Union Pacific for the use of the Southern Pacific lines, so far as they were necessary, and absolutely necessary.

Q. What competition would there then be between railroad lines?

A. As I said it should be under proper regulation. I do not think that it is to the advantage of the business interests of this country to force business around upon improvident up and down hill lines, where there is a straighter and more economical line to be had. I do not mean to say that no business ought to be allowed to go over that line, because there are other conditions sometimes when the

less fortunate line can do business to better advantage and at less cost; that is, in filling out its trains. But there should be
1295 some law—and I think the President of the United States had that in mind when he sent his Message to Congress last December; I do not remember his exact language—that there should be, under some proper control, a change in the laws which would enable contracts to be made between railroads.

Q. As a matter of fact, there are perhaps 220,000 miles of railroad in the United States. Are there 2,000 miles that you know of that are actually competing in rates?

A. I think every mile is.

Q. You know all the rates are made by bureaus, and after consultation between each other?

A. I don't know that. I know this, that in the struggle for business, the traffic managers of the railroads try to fill out their trains, and they take the business at the best terms they can get, as a rule, in order to do that. That is true even in your local business, that is competitive business. There is not a point on the Union Pacific Railroad that is not competing with a point on the Atchison road—that is, situated under the same conditions, although they may be 200 or 300 miles apart. If we are going to develop the traffic and the industries along our transportation lines, we have got to give the same service that exists at similar points on another railroad, or better service, no matter whether it is local or not.

Q. There are two points in your examination to which I wish to refer. One is that capitalization itself does not control and should not control in the fixing of a rate?

A. Not altogether.

1296 Q. The second proposition is the question of the right of a railroad to use its profits, after it has paid dividends to its stockholders, to acquire other railroads.

Q. I don't think that is quite the position, as you put it a little while ago.

Q. That is the question.

A. I don't think the railroads ought to use their profits to that extent. They ought to use those profits for the purpose of improving the lines they already have, or else, in building up the business of a railroad which they might acquire, they might use their profits on one line to improve the business of the other. It is to develop the business and develop the territory, no matter what line you put it on. For instance, the acquisition of the Southern Pacific by the Union Pacific; and the credit of the Union Pacific at that time enabled the Union Pacific to lend the Southern Pacific $20,000,000, or thereabouts, quickly, and make the improvements quickly. If you are interested in it, I would like to show you some time the maps which were submitted when the improvements on the Union Pacific were first started, and the maps that were submitted to the board of directors of the Southern Pacific when it was first started. I think it would be quite

an object lesson to you to know how these things are begun, and what they end in.

Q. The point I was getting at originally was the point of the interdependence of the rate and the return of the earnings of the road and the rate, and the use by the Union Pacific of a return upon freight rates for the purchase of stocks in another company as an investment.

1297 A. I don't think that condition ever has existed.

Q. You don't think it has.

A. No, I don't think it ever has.

Q. Was it the credit of the Union Pacific that enabled you to go out and purchase this Northern Pacific stock?

A. Yes, and we——

Q. Supposing at this time, instead of taking $100,000,000 of credit that you had cut down your rates and given the money back that way to the people, or that you had increased wages or had increased your dividends to your stockholders?

A. Yes, but the purpose that we had was to acquire contributed business to the Union Pacific from other lines.

Q. That is just the proposition; then you made these connections because of the benefit there would be in the connections themselves?

A. In the connections themselves.

Q. And one of the elements in making that connection was that you could control the rates of other competitors?

A. No, it was to enable us to go into the territory, that would enable us to open territory tributary to the Union Pacific and the Southern Pacific. For instance, in the Northern Pacific, if we had obtained control of the Northern Pacific, as we ought to, we would have opened the whole Washington and Oregon territory to the 15,000 or 16,000 miles of the Southern and Union Pacific, which we are now shut out of, and we have no joint rates—we are shut out of it absolutely, and the section served by those lines is shut off from direct communication and interchange of business with most of the territory north of the Columbia River.

1298 AFTER RECESS.

The CHAIRMAN. Proceed, Mr. Kellogg.

Mr. KELLOGG. Mr. Harriman, take the stand.

EDWARD H. HARRIMAN

resumed:

By Mr. KELLOGG:

Q. You stated that in your opinion the Northern Pacific Railroad would be ten years ahead if you had got control of it, as you ought to have done.

A. I did not mean to open up that vista, but as long as you have done it, perhaps I had better explain.

Q. All right.

A. I believe that the territory—that is, the rest of the country—the territories tributary to other railroads would have been opened to the use—for intercommunication I might say, to the territory served by the Northern Pacific. I believe the improvements on the Northern Pacific would have been more drastic, that their equipment and motive power would have been increased more rapidly, and I believe, more intelligently.

Q. Well——

A. I understand—I am told now that the Northern Pacific has got—is unable to move the traffic tributary to it, and that a large part of its motive power—excuse me, not a large part of its motive power, but a considerable part of its motive power is out of service, because of not being in proper condition.

Q. Well, there is a good deal of blockade of freight all over the country, isn't there?

A. Do you want to defend the Northern Pacific?

1299 Q. No, I want to see if they are not all alike, that is all.

A. I have no doubt there is some freight congestion.

Q. You may be quite right.

A. Yes.

Q. The public is interested primarily in the rates and next in the service, is it not?

A. Yes, and so are the carriers.

Q. That is right; their interest should be mutual. Then I judge if you think the Union Pacific has been better managed—and I have no doubt it has been well managed—that it has given better service and at better rates.

A. No, I will say this, that it has developed its lines quicker, and to better advantage than the other lines north of it or south of it.

Q. Do you undertake to say it has given better rates than other trans-continental lines?

A. You are going to try to show that we charge higher rates?

Q. I will try to show—let us see.

A. I will explain the whole thing. The traffic of the Union Pacific and the Southern Pacific is more diversified than the lines north or between them; in other words, the commodities carried by the Union Pacific are of a higher class than those carried by the Northern Pacific or the Great Northern. The figures I have in my mind now—I don't remember about the Northern Pacific, but I believe that nearly 75 per cent. of the traffic on the Great Northern is either the products of the mines or lumber, the products of the forest, and only a little

1300 over fifty per cent. of the commodities of the Union Pacific are of the same character; therefore if the rate on the Union Pacific, the average rate is being computed, that ought to be taken into consideration.

Q. Very well. Now, is it a fact that in ten years, from 1896 to 1906, the rates of the Union Pacific have not been reduced at all, or at least to any appreciable extent?

A. I think about seventeen per cent.

Q. I have had made up——

A. I am not talking about ten years; I am talking about since we have had it.

Q. Yes. I have a statement which shows the rate per ton per mile on the Union Pacific Road each year from 1896 to and including 1906, and it shows——

A. Let me see it, will you?

Q. Yes, sir; I will, when I complete the question. That in 1896 the rate per ton per mile was substantially .95 of a cent, and 1906 it was substantially .92 of a cent.

A. Have you got the Union Pacific proper or the Union Pacific system?

Q. The Union Pacific proper, I suppose.

Comr. CLEMENTS. By whom was that prepared?

Mr. KELLOGG. By the statistician of the Interstate Commerce Commission from the reports of the Union Pacific Railroad. And that for a number of years after 1896 and down to 1905, the rates on the Union Pacific were increased.

A. They were increased up to 1901, and decreased from that right down to 1906. In other words, through 1900 and 1901, they were over a cent a ton a mile and 1.5 cents, and in 1906, .924 cent.

1301 Q. But they were higher in 1903 and 1904 than they were in 1906, were they not?

A. Yes, they were higher in 1902, 1903 and 1904 than they were in 1906. You have 2,900 miles; I don't know what this refers to. There is only 1,800 miles in 1896, 1897 and 1898, and then it increases to 2,900 miles and 3,000 miles from 1900 on, so that you are including some of the Short Line with it.

Q. I am not including the Short Line or the Oregon Navigation Company.

A. Yes, but you take 1899, the rate on the Union Pacific, as you have it here for 2,848 miles, was 1.16 cents.

Q. Yes.

A. And in 1906, it was .924 cent.

Q. Yes.

A. In other words, it was reduced from more than a cent a ton a mile to less than a cent a ton a mile.

Q. But it had increased after 1896.

A. I was not managing the road in 1896.

Q. When did you commence?

A. In the spring of 1898.

Q. In the spring of 1898?

A. That was on 1,848 or 1,849 miles of road, and now you have interjected 1,000 miles more; I don't know what that thousand miles was.

Q. I do not. They were made up from your reports.

A. Well, you can make figures appear any way you please, but in 1899 is the year you begin with 2,800 miles of road; compare that

with 1906 and it shows about fifteen per cent. higher in 1899 than in 1906. That may have changed also by the commodities carried, whether they were a higher class of commodity, or a low class of commodity.

1302 Q. Well, that statement was put in evidence last January when Mr. Mahl or Mr. Miller was on the stand, I have forgotten which, and no one has questioned it since. It comes from the statistician of the Interstate Commerce Commission.

A. Well, it shows they have been produced from the same mileage.

Q. But for four or five years, yes, six years after you had the management of the Union Pacific, its rates were higher than they were in 1896, were they not?

A. Well, that is——

Q. If those figures are correct.

A. Now, you cannot say those figures are correct in comparing 1,800 miles of road to 2,800. What is that thousand miles, do you know?

A VOICE. I suppose it includes some of the branch lines.

WITNESS. Of course the branch line service, the rates are higher there than on the main line. That probably accounts for it.

Q. Let us take the Southern Pacific. You became connected with the management at what time—in 1901, wasn't it?

A. I think it was.

Q. The rates on the Southern Pacific in 1901, when you became the manager of the road were .93 of a cent per ton per mile, and in 1906, 1.10 cents per ton per mile. Is that due to your management, or due to the management of the Union Pacific, or is it due to the joint control, the elimination of competition?

A. Well, here you have it again, Mr. Kellogg. In 1901 the rate was .932 of a cent, that is the first year.

Q. Yes.

1303 A. The next year they went to .925 of a cent. I was still in control, as you say, and the next year they went to .888 and the next year to .898, and then the next year they went up to over a cent, and the next year it was 1.10 cents. Now there are additions there, a couple of hundred miles of road added to it; those are probably branch lines. You cannot tell whether that was because of the increase in high-class commodities. We have had a very large increase in the shipment of fast trains carrying fruit.

Q. Well——

A. Those are matters which you have got to consider; you have got to take in the class of business that one road does in comparing it with either former years, or with the traffic of other roads.

Q. But the mileage operated in 1896 was fourteen miles less than in 1905, was it not, and the rates were increased?

A. Oh, well, they were practically the same.

Q. The last three or four years the mileage was practically the same, wasn't it?

A. No, I don't know that it was. For instance, that jump—I don't know why these mileages have changed, 5,200 miles in 1902 to 5,400 in 1906. The rates in 1905 and 1906 are practically the same.

Mr. LOVETT. What is the mileage given?

WITNESS. 5,406 miles in 1906.

Q. What is it in 1905?

A. 5,400 miles.

Q. And in 1904?

A. 5,412 miles.

Q. So those three years, the mileage was substantially the same?

A. Yes.

Q. What was the rate per ton per mile those three years?

1304 A. I will begin in 1903, .888, .898. Then in 1905 it jumped to a cent. Now I can not tell you why.

Q. Well, you would not think, Mr. Harriman——

A. It may be in the class of commodities.

Q. —that on the Southern Pacific road, then, there had been any decrease in rates since the control of it by the Union Pacific, would you?

A. Well, there were decreases and increases again.

Q. But they are higher now than they have ever been before, except back in 1896; is not that true?

A. Is that so? What were they in 1906?

Q. Substantially the same, 1.12 and 1.10 now.

A. Yes, that may be right.

Q. Now, is it not a fact that the Union Pacific, controlling the Southern Pacific, the same management, the same control, the same traffic official, president, boards of directors, the same stock ownership to the extent of forty-five per cent of it, that all inducement to competition has been taken away, and the rates have been increased?

A. I think not.

Q. You do not think so?

A. I think not.

Q. Then you think consolidation or joint ownership in the same interest does not tend to stiffen the rates or put them up?

A. Not necessarily.

Q. It takes away all inducement to reduce them, doesn't it?

A. Wait a minute. You have got to go into the details of the business. Let us take Atchison, for instance.

Q. All right; let us take the Atchison. The Atchison, Topeka & Santa Fe, its rate per ton per mile in 1896 was 1.02

1305 cents per ton per mile; in 1906 it was .89 of a cent.

A. How could the Southern Pacific maintain a rate higher than the Atchison and get any business? It is the Southern Pacific and Atchison you have got to compare and not the Union Pacific.

Q. But it did maintain a higher rate.

A. That is just the point. You will find that the Atchison road has developed a traffic of low class commodities, lumber and products

of mines, while the Southern Pacific has probably developed a traffic of merchandise and higher class products of the farm and fruits, and that sort of thing.

Q. In spite of the rate per ton per mile on the Union Pacific, remaining substantially the same as it was ten years ago, its gross earnings have doubled and its net earnings have more than doubled per mile of road, is not that true?

A. I should think very likely it was.

Q. Now, is it not a fact that substantially all over the United States, except in the Union Pacific and Southern Pacific territory, where there is no competition, the rates have decreased?

A. I can not consent to that.

Q. You can not consent to it?

A. No, I can not consent to it.

Q. If it was true, you could consent to it, couldn't you?

A. Certainly, but I don't think it is.

Q. Take the Atchison. You admit the Atchison has decreased its rate per ton per mile more than the Southern and Union Pacific?

A. Absolutely.

Q. Let us take the Northern Pacific first. The Northern Pacific rate per ton per mile in 1896 was 1.13 cents?

1306 A. Yes, and now it is lower, and if they would let us take some of that lumber that they can not carry themselves, we would show an average rate much less than we do now.

Q. Its rate is .82 of a cent?

A. That is true, but they are carrying more lumber on long hauls, from Washington to the markets in the Eastern States or Middle States, I might say, and if we could get some of that traffic which we hope to get and would have gotten if we had obtained control of the Northern Pacific, we would have opened our territory to those products and the rates on those would have been materially less than the higher class traffic we now carry, and to that extent the average rate per ton per mile on the Union Pacific would have been reduced.

Q. That is, you would have reduced the rates on the Northern Pacific faster than they did?

A. I think very likely, and I do not believe you will find the products of the farm, the rates on products of the farm on the Northern Pacific or Great Northern are less than they are on the Union Pacific.

Comr. LANE. Why cannot you get some of that Puget Sound lumber?

WITNESS. Because we have no lines running there.

Comr. LANE. Why can't you make a joint rate with the Northern Pacific?

WITNESS. Because they won't do it.

Comr. LANE. Why can't you require it?

WITNESS. That is the question I would like to have decided.

Comr. LANE. There is power in the Commission to make a joint route and joint rate.

1307 WITNESS. You might take it up, and I am quite interested, if the Commission have it on their minds to open up the line as fast as possible, but they have closed the gateway in every instance.

Comr. LANE. We found that the Sacramento gateway was closed from Portland around to Sacramento.

WITNESS. Yes. Nobody would have ever thought any business would have been done at Sacramento around by the way of Portland.

Comr. LANE. Well, there was some competitive business.

WITNESS. It would not amount to anything, it would not have been a flea bite.

Q. Take the Canadian Pacific.

A. There you have got it again; you are in a different territory. What are the grain rates on the Canadian Pacific for like distances as compared with the Union Pacific?

Q. I don't know.

A. What are the conditions on the Canadian Pacific as compared with the Union Pacific? What do they have to pay for fuel and labor? Everything else is in a very different condition from any railroad in the United States. If we could have the same control of our management that the Canadian Pacific have, and the same cost for material and labor, I think we could probably operate our lines for less cost and less charge.

Q. Well, will you name some transcontinental line which you consider a fair comparison with the Union Pacific on the question of rates?

A. I do not believe there is one.

Q. You think they are entitled to higher rates than any of
1308 them?

A. No, I do not. I think they are charging the same rates, and possibly less, for like commodities.

Q. Is it not a fact that the Southern Pacific, and Santa Fe and Union Pacific traffic is largely the same class?

A. Not exactly the same.

Q. Not exactly the same, but it is largely the same class?

A. The Atchison has developed a very large business on lumber and coal on their eastern lines, more than we have, and more than the Southern Pacific has, but you will find that we charge no higher rate for the movement of the products of California to the markets in the East than the Atchison does. You will find we charge no higher for like commodities at any local points than the Atchison does, or Northern Pacific, or Great Northern.

Q. Your rate per ton per mile is higher on your system than any one of them, and yours is the only one that has not been decreased; therefore I want to know whether it was due to superior management or whether it was——

A. You have got in there, which is also shown by the Union Pacific, the fact that we have a lot of branch lines, and the rate on the branch line service is higher than on the main line.

Q. I have not included it on the Southern Pacific.

A. The Southern Pacific has not so many branch lines; it has a higher class of traffic than the Atchison or any other transcontinental lines other than the Union Pacific.

Mr. LOVETT. In that connection, they both have a very much larger business?

WITNESS. Yes, and their rates on their local business are
1309 relatively of the same parity with local rates on any other line. They could not be any higher, and possibly because we have developed more local business, our rates may be lower; I don't know; it may be our local rates as compared with local rates on other lines are lower, and that is the reason we have developed more local traffic.

Mr. KELLOGG. While I am looking up the matter, I would like Mr. Severance to ask some questions about three or four matters that occurred out west, that I don't know about.

By Mr. SEVERANCE:

Q. You want to make a statement with reference to the ownership of the Mongolia and Manchuria.

A. As I remember it, the president of the Pacific Mail Steamship Company stated——

Q. The vice-president; the president is here.

A. The president is now stating it. The vice-president of the Pacific Mail Steamship Company stated in his testimony in San Francisco that the ownership of the Mongolia and Manchuria were in my name or belonged to me, and that the money paid for the rental of those steamers was sent to me. Now, that was reported here in the New York papers as being a fact, and in fact one of the papers wrote—went to the trouble of writing an editorial showing that I was using my official position to further my own personal benefit.

Now, the fact is—and I believe it was shown in that—at that time—but not reported here in the New York papers—I believe at the same hearing—that the beneficial ownership of those boats was in the
1310 Oregon Short Line, and had been immediately assigned to me by the Oregon Short Line, and that the rental for those ships was paid to the Oregon Short Line. The ships were taken in my name for the purpose of convenience when we negotiated for the purchase of them. They were partly completed, and Mr. Schwerin came to me with the statement that if the Pacific Mail was to take the title to those ships, that I would have to give a personal guarantee. Now, I did not think that I was called upon to give a personal guarantee, and another thing, the Pacific Mail was largely in debt then for vessels already constructed, and so I decided to take the ships in my own name in order to hasten the closing of the negotiations and the changes in the boats which had to be made; they were partly constructed, and they had to be changed to suit our trade. They have always been held in the interest of the Oregon Short Line; the annual reports of the Oregon Short Line show their ownership and show the rental which was received for them.

Q. Who fixed that rental, Mr. Harriman?

A. It was a matter between myself and Mr. Schwerin as being a fair rental for the risk and amount involved.

Q. And Mr. Schwerin is vice-president of the Pacific Mail?

A. Yes, and I am the president of the Oregon Short Line. It was not a very important——

Q. You are president of the Pacific Mail, but not as president of the Pacific Mail, but divorcing yourself, as president of the Short Line, you made the trade?

A. It was not a very important transaction.

Q. Only involved four or five million dollars in ships, did it?

1311 A. It amounted to over five million dollars in the purchase, but I thought you had reference to the rental.

Q. That rental was fixed between Mr. Schwerin and yourself, and at the time you were president of both the Oregon Short Line and the Pacific Mail?

A. I undoubtedly was.

Q. And you took the advice of your vice-president as to what would be fair from the standpoint of the Pacific Mail?

A. Not exactly that. It was a matter of what would be fair to the Oregon Short Line for the risk and amount involved.

Q. You bought those ships before you had any specific authority to do it from the Short Line?

A. Absolutely. It was one of those things you have to do sometimes. Mr. Schwerin did not know that—I told him when we found there was a complication about taking the title to the ships—I said "You take them right in my name."

Q. You afterwards reported that to the executive committee of the Short Line, and it was approved as it appeared on the record?

A. Yes, we had a right to get the ships.

Q. Now, one other matter Judge Lovett wanted me to ask you—You never had any personal interest in the matter?

A. In what?

Q. In those ships?

A. Not a bit.

Q. You bought them, and the Short Line——

A. They were turned over exactly at what they cost—and the contract was assigned to them, I guess.

Q. At the time we were taking testimony in Portland, Ore., it appeared that the Northern Pacific and Great Northern roads jointly were building a line into Portland, commonly known in that country as the North Bank Route. You have heard that?

A. Yes.

1312 Q. And it also appeared that some one of your companies—no one there seemed to know which one, or whether it was yourself individually, had been doing what could be done perhaps to obstruct the building of that road, by trouble over rights of way and injunction suits and various things. Will you kindly tell us which one of your corporations it was that was interested?

A. I think the records show that. You will have to go to somebody else about that.

Q. You don't know?

A. They conduct those matters out in that territory, and they are doing what they can to protect our interests there. No, I could not tell you.

Q. Nobody there seemed to know.

A. If they do not, I do not, because it is all in their hands.

Q. And you don't know, then, at whose instance that was done, or anything about it?

A. Well, I can not say I don't know anything about it. I know in a general way that there is a corporation out there that has had some interest on the north bank of the Columbia River.

Q. Who owns the stock of that corporation?

A. I could not tell you.

Q. Is it one of the companies that you are president of?

A. I am not sure; I could not tell you that.

Q. You don't even know that?

A. I don't even know that; it may or may not be.

Q. You also have another corporation, have you not, that is about to build a line up to Puget Sound from Portland?

A. Yes, we have.

Q. That work is progressing now?

1313 A. That work is progressing very extensively too, and the Northern Pacific is doing everything it can to obstruct it.

Q. The situation in that territory is that the Northern Pacific and Great Northern are obstructing you as far as they can going up the Columbia River and up to the Sound, and you are obstructing them in getting into Portland?

A. Whenever we can.

Q. And those are the methods, taken by yourself and the other railroad people, to facilitate the building of railroads and the development of the country?

A. That is what we want to avoid in this frank arrangement with the Atchison road, referred to a little while ago.

Q. Your idea of the frank arrangement is that one company shall keep out of the other's territory?

A. No, sir; we shall do everything we can to develop territory adjacent to our lines, and so much so that where it is necessary we may join together.

Q. It is in pursuance of that benevolent idea that you are endeavoring to prevent those lines getting into Portland?

A. No; I object; it is a business purpose, pure and simple, to save unnecessary investment of capital. A double track line from Portland to Seattle and Tacoma could do four or five times the business that two single track roads would do, at a less cost. The public is interested to that extent, that this business shall be conducted on lines at the least cost, and therefore eventually at the less charge.

Q. Then I will repeat my question: Is it in pursuance of this view of yours as to good sound policy in railroading, that
1314 you are endeavoring to prevent your rivals spending money to get into Portland?

A. No. I think that is probably a sort of business arrangement we all have, to give us some consideration, in our attempt to reach Puget Sound territory.

Q. That is the reason for it, is it, and up to this time it has been a matter of litigation?

A. Yes; but we proceeded all right. I think we have come to a conclusion recently whereby we have got our terminals at Seattle and Tacoma—I don't know but we have at Portland.

Q. And did the conclusion also include their going on there building the North Bank?

A. That is very small, hardly worth considering.

Comr. LANE. Have you bought any right of way from Portland up?

WITNESS. Yes, we have done it at a very great expense, in a very short time—the terminal properties in Seattle and Portland.

Comr. LANE. The information was you had terminals at Seattle and Tacoma, but had bought no right of way?

WITNESS. It is a question of location, naturally. We do not proceed to buy right of way until we know how our road has been located. We do not begin locating our road until we get terminal property. We turned around the usual methods; we have had a good deal of experience in that; you get a railroad up to a place and they hold you up for terminals. If you have not got your road constructed they would give you facilities that you could not otherwise get if you had the line completed to the boundaries. The construction of that
1315 road has been delayed mostly by the obstruction that has been put upon our getting the necessary franchise rights at Seattle. I told those people up there, when I was there just after the San Francisco fire, that it was not a question of our reaching them, but a question of their reaching us; just as soon as they gave us proper rights, the road would be constructed and it would not be begun only from Portland, but begun from Seattle down.

By Mr. KELLOGG:

Q. Mr. Harriman, I looked over those figures, and I want to call to your attention that in spite of the fact that the Union Pacific and the Southern Pacific have not materially reduced their rates in ten years, I notice the ratio of operating expenses to gross earnings have very much decreased during the ten years on both roads, and especially on the Union Pacific. Do you know that?

A. I think likely that is so.

Q. In other words, according to your report of 1906, it cost you substantially 55 per cent of your gross earnings to operate, while in

1896 it cost you 62 per cent—in ten years there is a reduction of practically 7 per cent?

A. Just read that, will you?

Q. (Showing counsel paper.) That is one of the reasons why they are less. There is another. (Showing counsel paper.) I guess you had better read those. You can read them. I don't care what you read.

A. I don't think those are the kind of things you want.

Q. No, sir; I want it; I want to know the reason why.

A. I don't want to read it out here; it takes too long.

1316 Q. You can tell it, then. I want to know.

A. All right.

Q. Now, your rates have not gone down, and yet your ratio of operating expenses to gross earnings have gone down. Your ratio of conducting transportation to gross earnings is very much decreased, isn't it?

A. Yes, and the price of labor and the price of materials all gone up.

Q. And your gross earnings have doubled; but labor and materials are all included in those operating expenses.

A. They are all gone up.

Q. In spite of the fact that labor and materials are going up, your operating expenses have decreased?

A. Proportionately. Our operating expenses have not increased, but our percentage of operating expenses.

Mr. MILBURN. Mr. Harriman has testified the rates have decreased about 17 per cent.

WITNESS. About 17 per cent.

Mr. MILBURN. That is earnings per ton mile, which is an entirely different thing.

Mr. KELLOGG. It is a very good indication of what the road is earning.

Mr. MILBURN. You can not have an increase per ton per mile with a decrease of rates.

Q. It is a fact, isn't it, that in nearly all other parts of the country the rate per ton per mile—the rates have gone down on the roads, although the material and labor has increased in price?

A. It is so on all roads.

Q. Yes, sir.

A. Not all other roads, but all roads.

1317 Q. Now, is it not a fact that within the last ten years nearly all products from the Atlantic seaboard to California have been increased ten cents a hundred?

A. That may be. I had not anything to do with that.

Q. Then the rates have not been reduced much, have they?

A. In what time is that?

Q. About 1904 just previous thereto. Do you know that from nearly all eastern points to all California points the rates on all

classes of products, commodity rates, and other rates were increased substantially ten cents a hundred?

A. You will have to go to the traffic men for that. What were they in 1904 as compared with 1902 and 1901?

Q. They were higher in 1904 than in 1902 and 1901.

A. They were, eh?

Q. Yes, sir. They were increased just prior to 1904. Now, here is the tariff with the increases. Do you wish to look at it?

A. I really don't know the reasons, but I presume that the price of these very things that you spoke about has increased materially during that time.

Q. The tariff I refer to is the westbound transcontinental freight bureau tariff.

A. I had nothing to do with that.

Q. Of January 18, 1904.

A. The tariff on all railroads on all commodities was alike.

Q. On all Pacific railroads, certainly.

A. I mean on all railroads from the Atlantic coast line to the Pacific, it don't make any difference which way they went.

Q. Oh, certainly not; that is all right.

1318 A. Did it make any difference whether they went Union Pacific or Southern Pacific or Great Northern?

Q. They were increased on all of them.

A. That does not bear on this question.

Q. It bears on the reasonableness of your rates, and it bears upon the question of whether the rates have been decreased on the Pacific roads, as you say.

A. There may have been reasons why they should have been increased. Is there any law against our increasing rates?

Q. That is just what we are inquiring into, whether they should be or should not be increased.

A. I think perhaps I can tell you.

Q. Tell me.

A. In the first place, the Union Pacific and Southern Pacific have expended over $250,000,000 in new improvements of their lines, and the extensions and the acquisitions of terminals.

Q. Out of their earnings?

A. Some out of their earnings and some from the issue of securities.

Q. How much out of the earnings?

A. I could not tell you now; the annual reports will show. It all goes into a general fund. You have been talking on one part of this management of these properties, and that has been mostly in regard to the purchase of securities. The management of the Union Pacific and Southern Pacific have not given their time to buying securities or selling securities. The purchase of securities was only incident—since the 1st of July—was only incident to the

1319 forced acquisition of Northern Pacific, of Great Northern,

and the rise in their market value that made it advisable and necessary for us to change that investment into other things.

Q. You have explained that once.

A. Now, then, there is another side to this management of these properties, and that is the physical management of the properties in the interest of the stockholders and the public.

Q. Won't you answer my question?

A. Wait one minute; let me go on. I am answering the question you asked me, and I insist upon answering.

Since we have acquired these properties we have expended in improvements, additions, and extensions, over $250,000,000 that has been expended in the acquisition of terminal properties, the construction of sidetracks, passing tracks, second tracks, reduction of grades, straightening of lines, elimination of curvature thereby, the purchase of equipment. The allied lines, Union Pacific and Southern Pacific, have purchased in that time over 50,000 freight cars, purchased nearly 1,200 passenger cars; they have purchased over 1,500 locomotives of higher capacity than former locomotives; they have rerailed about 7,500 miles of railroad, putting in over a million tons of rails of heavier weight—80 or 90 pounds to the yard; they have put in automatic block signals, safety signals upon 3,200 miles—more than any other railroad in the world, and they have got under construction, authorized and under construction, 1,500 miles more. Now, all these expenditures have to be given a great deal of thought and a great deal of time, and it does not leave much of the
1320 time of the management to the purpose of going into what you have been terming this buying and selling of securities. The result of their expenditures, largely made in the employment of labor, purchase of material in sections of the country tributary to our own lines, has increased the volume of business in that territory, has employed labor, distributed money in that territory and increased the volume of business, which has largely added to the earnings of the allied lines, enabled the better conduct of the properties, has enabled the movement of larger traffic, quicker development of the territory, and therefore a less percentage of cost in moving the traffic than it would have been if the lines had been left approximately in the same condition that they were when we got them. Now, I will give you a little illustration here. The first thing that was done on the Union Pacific—the very first move made on the Union Pacific, on the lines between Cheyenne and Ogden, that was the mountain division, and if you had taken the trouble to read this little paper it will show—you have been brought up in a prairie country where everything is level. The important matter was for us to consider how we could get the best line through the Rocky Mountains, as a protective measure, as much as anything else, so that we could operate it to advantage and at the least cost, and permit more business to go over it. In the first place we altered—the whole thing I think was about 480 miles—and out of that 480 miles we rebuilt about half of it, practically went over 50 per cent of

the whole line. We saved in distance about 30 miles out of the whole.

The maximum grade on the old line varied from 97.68 feet
1321 to the mile—75.3—72.22—68.6. On the reconstruction the grade was reduced to 43.3—that is our mountain grade. The maximum curvature was reduced from five to six degrees, from 1 to 1½ and 3 and 4 degrees.

The total angle of degrees of the old line was over 11,000. On the new line was a little over 4,000. There was a saving of nearly 7,000 angles—degrees of angles, or that would be really 22 circles; that is, the trains were saved going around 22 times in making that distance. I think that is about all. That is the first thing that we did. Those improvements, which cost all these millions of dollars, have enabled us to develop a larger traffic, permit a greater traffic to go over those lines, and to reduce the percentage of the cost of operation.

Q. Well now, Mr. Harriman, that condition, to a greater or less extent, has been going on, or that change, rather, on all of the American railroads.

A. No, sir; it has not; not to that extent.

Q. Haven't every one of them spent millions in improvements?

A. They are now, but they have not done it as quick as we did.

Q. Didn't they commence to spend them immediately after the panic of 1896?

A. Not so drastic.

Q. The Pennsylvania?

A. The Pennsylvania has, but if it had begun in 1896 with the drastic expenditures it is now making, it would not have suffered as it has in the last four or five years.

Q. Did not the St. Paul and Northwestern?

A. Not to such an extent.

1322 Q. The Northern Pacific and the Atchison?

A. No, they have veneered.

Q. No other railroads have improved as the Union Pacific has?

A. No, sir; not one in the country.

Q. None has been managed as well?

A. I do not say that. I say none of them have had the enormous expenditure put on them.

Q. Have you been enabled to pay your dividends and operating expenses and also earn that amount of money to put into the property?

A. No, sir; we had to borrow money.

Q. How much did you bond the Union Pacific for improvements?

A. You have got it all in our annual reports.

Q. Have you bonded the Union Pacific for one dollar for improvements? Haven't you taken every dollar out of earnings and paid the dividends besides?

A. $250,000,000.

Q. The Union Pacific has not spent $250,000,000.

A. I am not separating them. I was speaking in round numbers of the allied lines.

Q. I want actual facts; I don't want round numbers.

A. Our annual reports will show it.

Q. How much money have you spent on Union Pacific?

A. I can't remember that part of it.

Q. How do you know you spent any, then, if you can't remember?

A. We certainly did not reduce those grades and eliminate that curvature and add cars and locomotives to the Union Pacific without expending something for it.

Q. We are considering this question of rates. You had $100,000,000 of bonds—of the Union Pacific original bonds to start with, and you have got $100,000,000 yet, haven't you?

A. Undoubtedly.

Q. The other $100,000,000 were issued to purchase stock
1323 with and retire stocks. Now, then, haven't you made your improvements on the Union Pacific out of earnings?

A. I think part of that $100,000,000 of bonds was reserved for just such improvements.

Q. Well, do you know?

A. Yes, I know they were. We had a certain amount of cash on hand under the reorganization.

Q. How much was on hand for improvements?

A. I think we had about $5,000,000 of cash provided after the reorganization.

Q. How much was on hand for improvements when the reorganization took place? Can you tell?

A. I think about $5,000,000 of cash was on hand.

Q. $5,000,000 of cash?

A. One minute, and I will give you—my mind has got to travel back now.

Q. Give it to us as near as you can.

A. We had considerable of first mortgage bonds, which I think you referred to. I don't think they were all used at that time.

Q. About what do you think was on hand?

A. I don't remember that. I think there was something over $5,000,000.

Q. How many bonds, in your opinion?

A. $5,000,000 in cash, and I think something over $5,000,000 in bonds.

Q. Something over $10,000,000 you mean?

A. I think so—wait one minute—then we sold our Pullman
1324 equipment for about a million and a half of dollars and put that into freight cars.

Q. You had to buy other equipment?

A. No; we made a contract with the Pullman Company to supply that equipment themselves. Then all the sales of lands have gone into improvements, and everything that we could gather together in any way we have put into the improvements on the property.

Q. The land grant you mean—the gift of the Government?

A. I don't know there was any gift of the Government; I had nothing to do with that; there was no gift of the Government.

Q. Now, in addition to that you have taken a large amount of earnings of the Union Pacific and put it in the property, haven't you?

A. We have taken everything that we could get and put it into the property.

Q. Have you taken a large amount of net earnings?

A. Instead of distributing it to the stockholders we put it into the property.

Q. Now, in addition to that——

A. Whatever we have taken out of earnings we put into the property when we could have distributed it to the stockholders.

Q. Don't you think a railroad company whose rates have not decreased materially in ten years, whose percentage of operating expenses have decreased, which can pay 10 per cent. dividends on its stock and still have a large surplus——

A. Is pretty well managed.

Q. —could reduce the rate a little—pretty well managed
1325 and could afford to reduce the rates?

A. It could have reduced the rates if the rates were reduced in like manner on other lines.

Q. They could not reduce unless some other line——

A. Certainly we could not.

Q. Then competition is the only thing that will force down the rate?

A. That is possibly so, competition between communities and competition of railroads.

Q. And therefore, there being no competition, the rates have not been forced down?

A. There is competition in our territory—very drastic competition.

Q. Do you think that 10 per cent. dividends for a railroad as a permanent thing, which company can earn a large amount in addition to that to put in the property every year, is a fair rate of dividend?

A. Now, Mr. Kellogg, from 1893 or 1894 to 1898, 70 per cent. of the capital invested in railroads was paying no dividends, and it would be quite consistent that a ten per cent. dividend to distribute over an average of twenty years, from a railroad that had not received anything for ten years, and perhaps for five or six or eight years, received a fair compensation—what would you think would be a fair return to a railroad?

Q. I am not on the stand; I am not an expert.

A. Well, I thought you were. Now, the Union Pacific in the first place does not receive 10 per cent. dividends from traffic. It received whatever dividends from traffic, less the amount that is paid from the income from these investments.

1326 Q. When the dividend of the Union Pacific Railroad Company on the 15th of August last was declared—I think it was

August 15th—there was a statement of its net earnings from operation made to the board of directors, was there not? [Showing Mr. Harriman a paper.]

A. (After examining paper.) Yes, sir; I believe that is right. Now then, we declared a dividend of five per cent.

Q. Semi-annual or annual?

A. Semi-annual. Three per cent out of the surplus which is shown here from traffic, and two per cent. out of the surplus that is shown from receipts from rentals and other sources in excess of miscellaneous expenses. In other words, these receipts from other sources and from traffic are put down here as $7,767,000, and then there is to be added to that a dividend on the Southern Pacific, about two million and a quarter, making about ten million for the year. So from that ten million of receipts from investments we paid a dividend at the rate of four per cent. per annum, and out of the receipts from traffic, we paid a dividend at the rate of six per cent. per annum.

Q. I notice here that after paying your preferred dividends, and all your prior fixed charges, including rentals, your surplus was substantially twenty-five million dollars.

A. That is right.

Q. It took $19,000,000 of that to pay the common stock dividend for a year at ten per cent, did it not?

A. That is the way we used it.

Q. That $25,000,000 surplus included all the income of the Union Pacific?

A. All the income, did it?

1327 Q. Did it? I thought so.

A. Let me put it my way.

Q. Put it your way then; you have it anyhow.

A. I am going to try to.

Q. What was the total income of the Union Pacific road, after paying its interest, fixed charges, rentals and its preferred dividends?

A. The total income?

Q. The total income.

A. It was $25,219,000, shown by this statement.

Q. Yes. Now then——

A. But wait a minute. The income included in that, from sources other than traffic, was $7,767,000 so that the income from traffic, less the dividend on preferred stock and the interest on bonded debt, was $17,500,000, in round numbers—a little less, $17,450,000.

Q. Yes, sir.

A. You can't pay ten per cent. out of that. Every railroad has to have more than its actual earnings from which to pay a dividend. That is, it has to have something more. It can not distribute exactly what its net earnings are. If it did, it would soon go bankrupt. It has to have a surplus with which to maintain and improve its property and to provide a margin on which it can base a credit in case it has to borrow money in case of some extraordinary emergency. The old method of distributing whatever earnings they have is what

largely led to the bankruptcy or trouble of many of the lines. In addition to that $17,000,000, we paid at the rate of six per cent. per annum out of that seventeen and a half million dollars, which would have taken about twelve million dollars and the other was a
1328 margin of safety. Now then, out of that $7,700,000 received from other sources, to which you could add the two and a quarter million, received from the Southern Pacific, making it round numbers, ten million dollars, we paid a dividend at the rate of four per cent. which would have taken eight million dollars, and the balance was carried to the credit of profit and loss.

Q. Then I understand you, Mr. Harriman, that from the earnings of the road itself, a ten per cent dividend was not justified?

A. I did not say it was not justified.

Q. Well, exclusive of its income from stocks or other sources?

A. You would not have paid that dividend.

Q. You could not have paid it, could you?

A. Not very well.

Q. That is, you think six per cent. was justified.

A. Absolutely.

Q. And that four per cent. came from earnings other than operation of the road?

A. Other than traffic.

Q. As a matter of fact, one hundred million dollars out of $195,000,000 of your stock was issued for other purposes than running the Union Pacific road, was it not?

A. There is no doubt about that.

Q. So that that dividend should come out of the income from other sources, should it not?

A. Well, it did.

Q. You used a part of the earnings of the Union Pacific road, necessarily, did you not, to pay dividends on stocks issued to buy securities with?

A. Some part of it. We paid on the whole capital stock, a certain proportion of the income from traffic, and a certain proportion of the income from investments.

1329 Q. In other words, your income from your investments would not have paid the dividends at ten per cent. upon the one hundred million dollars of stock issued to buy stock, would it? That would have been $10,000,000.

A. Yes; it was just about $10,000,000.

Q. I thought you said it was $7,000,000.

A. $7,000,000, and the dividends that we received from the Southern Pacific of two and a half million, would have made about $10,000,000.

Q. You did not receive that in that year.

A. It was taken out of the earnings of that year, the Southern Pacific earnings. It is shown in the annual report. I think the annual report includes it.

Q. Then if the stock, $95,000,000, was issued for operating the road, representing the road that carried the freight for the people, ten per cent. of that would only have been $9,500,000, would it not?

A. About that: about $10,000,000.

Q. And the earnings from the operations of the road would have paid that and left a large surplus, would they not?

A. About the same as it is there—just about the same. It would have taken about six or seven million dollars as a margin of safety to reinvest in that property from the earnings of that year, to maintain the property up to its highest standard. There may be years that we will not earn so much.

Mr. LOVETT. I would suggest, Mr. Kellogg, that even part of that was issued for the Oregon Short Line.

Q. Do you not think a road that can earn a surplus over ten per cent. of its common stock, which was very largely increased
1330 on the reorganization, over the debts it owed before——

A. I don't know whether it was increased. Wait a minute. You make that statement. I don't know whether it was increased on the reorganization or not. I doubt whether it was. I think the stock was issued to take up other securities, or in lieu of other securities, that were already outstanding. I don't know whether it did or not, but I do not concede that point.

Q. The total obligations of the Union Pacific were increased $36,000,000, were they not?

A. I think the Union Pacific stockholders are entitled to receive ten per cent. or fifteen per cent., if they can do it legitimately and properly, and give proper service to the territory reached by it or adjacent to it, and do it at no greater charge than that to similar territory in any other part of the country, and give better service than in any other part of the country.

Q. Do you think the——

A. I think the service rendered has something to do with the charge made.

Q. That is, you think the service of the Union Pacific entitles it to a higher rate for hauling freight than the same freight would be hauled for by other roads?

A. It does not get a higher rate for hauling the same freight under relative conditions on other roads. Maybe it received lower rates. Now, if it has put itself in a condition where it can conduct that same traffic at less cost than other roads, it is entitled to the difference. If it sacrificed dividends, if it waited for dividends,
1331 it is entitled to receive them in the end.

Q. I am trying to find out whether——

A. You are trying to find out whether we ought not to reduce our rates on the Union Pacific?

Q. Yes, sir.

A. And if we did reduce our rates on the Union Pacific, it would create such a scamper all over this country, that you would not hear the end of it. Just as long as you can keep some of those lines sol-

vent, the Union Pacific will continue to earn all the money it is earning now. If you are going to throw some of them into bankruptcy and create chaos, you may reduce our earnings.

Q. The Pacific roads do not seem in imminent danger of bankruptcy.

A. I don't think they are; and I don't think there is any imminent danger of our having our rates reduced.

Q. If you have your way, I should say not.

A. No, even if you have your way.

Q. Coming back again, I want to know if you think that a road that can pay ten per cent. on its capital, issued for the purpose of constructing and operating the road, equipping it, and having a large surplus, is not receiving too much income?

A. No, sir; I don't think so.

Q. You do not think so?

A. No, sir; not after the risk that has been attached to it and the experience they had had for ten years previous.

Q. Do you think——

A. Mr. Kellogg, do you think that the stockholders of any line are required to put their money into the extension or improvement of that line on the basis on which they could lend the money out
1332 on bond and mortgage in the City of New York, four and a half or five per cent., without taking any risk?

Q. No, sir; I do not think so.

A. I think the stockholders are entitled, just the same as any other business enterprise, to a fair return for the risk taken and the work done.

Q. I quite agree with you.

A. And the service rendered.

Q. I quite agree with you. Then after the payment of the $19,444,980 out of the surplus reported to the Board, you had $5,674,922 left?

A. I suppose your figures are right.

Q. And $2,000,000 more, to come from the Southern Pacific?

A. Yes, and it will be two million and a quarter more this year when we get the total income from the Southern Pacific.

Q. Did you declare six per cent. out of earnings and four per cent. out of stocks?

A. I presume so.

Q. Let me read the resolution.

A. Wait a minute. If the records have their statements wrong, I am not responsible for it, but the statement was made and the dividend declared, two per cent out of income from investment, and three per cent. out of income from traffic.

Q. Perhaps that was it. I will read the resolution. This was the meeting of August 15th. The first resolution was with reference to the preferred dividends.

"*Resolved* (2) That a semi-annual dividend of five dollars per share upon the common capital stock of this company be, and such

dividend is hereby declared, payable October 1st, 1905, to
1333 stockholders of record at 12 o'clock M. on the 15th day of September, 1906."

That was the meeting of August 15th.

"The chairman stated that as a number of the directors were unable to attend the meeting, it seemed proper that an announcement of the dividend should be deferred until they could be informed of the action taken and he suggested therefore that the announcement and publication of the dividend, provision for the closing of the transfer books, and also the question which had been discussed, as to the particular revenues against which portions of the dividend should be charged, be referred to the Executive Committee, whereupon, by motion duly made and seconded, it was unanimously resolved that the Executive Committee is hereby authorized and empowered to announce and publish the declaration of such dividend at such time as it may deem proper and to authorize and provide for the closing of the transfer books, for the purpose of said dividend, and for the purpose of the annual meeting of the stockholders to be held Tuesday, October 9, 1906, and to specify the income or other fund against which such dividend shall be charged, and to take such other action in connection with the declaration, payment and notice of such dividend, as such committee may deem necessary or advisable."

And again:

"That for the purpose of such dividend and of the annual meeting of the stockholders, to be held Tuesday, October 9, 1906, the stock transfer books of this company shall be closed at twelve o'clock M. on the 15th day of September, 1906, and reopened at ten o'clock A. M. on the 10th day of October, 1906.

1334 "That the secretary of this company be, and he is hereby authorized and directed to notify the secretary of the New York Stock Exchange, on the 17th instant, and before the hour fixed for the opening of said Exchange, on said date, of the declaration of said dividends. And the treasurer of this company, be and he is hereby authorized and directed to furnish notice of said dividends by publication of an advertisement in the usual form in papers published in the city of New York, as the Chairman of the Executive Committee shall direct."

I read those resolutions in evidence and asked Mr. Miller if there was submitted at either one of those meetings a statement showing out of what revenues the dividend was to be paid, the net earnings of the Union Pacific and the balance left after the payment of the five per cent. semi-annual dividend on the common stock and two per cent. on the preferred. He said he was away from the city. In response to that, this statement was given out, and I find no such action of the committee. I may be mistaken. Of course I have not read all your records.

A. The records you have may not be exactly correct.

Q. I do not say it is not true, but I do not find it.

A. I know that is the way it was done. I was there. I will tell you how that dividend was declared, gentlemen, if you would like to know it.

Q. All right, sir.

A. On the 19th day of July, I think it was, or, at any rate, at the July meeting of the Union Pacific Railroad, at which there
1335 was a very full attendance, I stated to the Board that in view of the increased earnings—we had estimated, but I thought we ought not to consider the question of dividend until we had the actual figures, and that the estimates for the earnings on the Southern Pacific, notwithstanding the San Francisco fire, were so surprising that I thought we should wait until we got the accurate figures of that, so as to be sure that our statements were correct, and that if they were found to be correct by the actual statements or figures, we should increase the dividend on the Union Pacific materially, and that I would bring the matter up again at the August meeting, and in the meantime I would like them all to be considering the question, and informing themselves on the subject. At the August meeting we had the June figures, and they were presented in this form. I then told them that the Southern Pacific—I am not sure whether the Southern Pacific had met before or after the Union Pacific. Did it, Judge Lovett? Do you remember?

Mr. KELLOGG. The meeting was on the same day, was it not?

Mr. LOVETT. The Southern Pacific met before the Union Pacific, on the same day.

WITNESS. This statement was prepared before the comptroller knew that there was any dividend to be declared on the Southern Pacific, and I presented this statement to them. Well, we had not the actual figures even then. We had a part of the estimate. I think the month of June was only estimated even at that meeting. We had not gotten in the actual figures, but it was approximately enough. When the figures were presented of the income, the Southern Pacific Board of Directors declared a dividend of two and a half per
1336 cent. Forty-five per cent of that had to go to the Union Pacific. Immediately after that we held a meeting of the Union Pacific. I then stated to them that to the income from sources other than I figured would have to be added, or ought to be added, that two and a half per cent which would make ten million dollars for the year. Then the discussion took place, and finally the action of the declaration of the five per cent dividend and the method of charging it. Of course it must have been intended to charge it from some other than the usual way. Otherwise, they would not have referred it to the Executive Committee to do it. Now, the Board of Directors had that full month in which to consider that whole question. The Executive Committee met the next day at three o'clock. The ordinary time would have been half past eleven in the morning. That was their regular day for meeting, but because of my having to go to the funeral of a very old friend of mine, the meeting was de-

ferred until I got back, and we did not get together until three o'clock in the afternoon. At that meeting the resolutions were passed which I think you read. Judge Lovett, have you the record there of the Executive Committee?

Mr. LOVETT. Yes.

WITNESS. Well, does not the Executive Committee record show that the declaration of the dividend was to be three per cent from receipts from traffic, and two per cent from receipts from income from other sources?

Mr. LOVETT. I was under the impression that it did. It appears not to be, though. The annual report of the stockholders states it was so charged.

1337 WITNESS. Well, there is a mistake. Those were the times during the vacation of the regular secretary of the company, but it was so stated to the Board of Directors, and it is evident that it was so, from the record that you have already read, that it was referred to the Executive Committee to be charged in such manner as they might deem best.

Now then, it got to be after three o'clock. Also, we had communicated, or I had communicated, particularly with one of the Executive Committee who lived in the west, and I did not want to take any action, until at least he might be heard from. So far as I remember, he assented, did he not, Mr. Millar?

Mr. MILLAR. He acknowledged the receipt.

Mr. LOVETT. The subject was referred to the Executive Committee, and it may have been at a subsequent meeting of the committee that it was acted upon.

WITNESS. I am quite sure there was action by the executive committee directing that this charge be made, as I say, two per cent. to income from investments and three per cent. to income from traffic.

It got to be after three o'clock in New York, and it was then a question of whether it was advisable to announce that dividend at once and have it come out in London before it did in New York, or to give the New York market the advantage of it. We discussed that in the Executive Committee, and we decided that it was best to have the announcement of the Union Pacific dividend made in New York before it was in London; that is, while the New York markets were open.

Q. Who were the members of the Executive Committee present at that discussion?

A. The records show it; I do not remember.

1338 Q. Messrs. Harriman, Lovett and Stillman, was it not?

A. I suppose that is so.

Q. Who were the directors absent from the meeting?

A. I don't remember that. The particular man I communicated with was Mr. Hughitt. That is all; and I wanted to hear from him particularly.

Q. Go on and finish your statement.

A. We had a full board in July. They were all notified that it was expected we would increase our dividends materially; and in August, if they did not come to that August meeting, it was their own fault, but it was difficult to reach some of the directors. They were off on yachting trips, and some in the west. Mr. Earling was off on the St. Paul road. Mr. Valentine was ill. Mr. Hughitt was in Chicago, and communicated with. So I left directions, after conferring with the Executive Committee, that the announcement should be made as stated, I think, in the minutes which you read. Then I left that afternoon and went off on a yacht. I was on the Sound when it was done. I was not there the next day, but the announcement was made in the Stock Exchange, before ten o'clock the next morning, and the full advantage of the declaration of that dividend was given to the New York market rather than to any other market.

Q. Did you complete your statement, Mr. Harriman?

A. Well, I wanted to find out what our records were. Judge Lovett confirms me in my recollection that I stated to the board, and to the Executive Committee, that the intention was to charge, as it was stated in the annual report—that the distribution of that dividend
1339 might be charged as I stated, two per cent. from income from investments and three per cent. to income from traffic. And I want to say in your suggestion there about ten per cent. return upon stock, that really the reason—one reason for many railroads being able to return dividends at all to the stockholders, is the fact that they have issued low rate of interest bonds, and that the total net earnings of money of our railroads do not exceed five or six per cent. on the total amount of capital invested; that the return to the stock is only on the saving that they make because of issuing or obtaining part of their capital from issuance of bonds.

Q. Well, that depends, Mr. Harriman, whether the stock represents anything. You don't know what the $95,000,000 of the Union Pacific stock does represent?

A. I know this, that the Union Pacific could not be put where it is now for anything like its capitalization; that the expenditures which have been made on it have increased so much in value that it could not be replaced there for anything like its capitalization.

Q. Now, after the meeting in July, did you state to the board, what you thought the dividend should be?

A. No, I told them I thought it should be materially increased.

Q. Southern Pacific or Union Pacific?

A. I told them we probably were on the verge of a distribution to the stockholders of the Southern Pacific, when they got their full statement.

Q. At the meeting which took place on the 15th of August,
1340 on the same date, the Southern Pacific board made and adopted identically the same sort of resolution, did it not?

A. Yes, but there was no statement to the Board of Directors of the Southern Pacific that there would be any division in the method of charging the dividend to any different accounts.

Q. I know, but——

A. One of the reasons why the Southern Pacific was able to make a distribution was because of its having been able to refund its high-rate bonds at a lower rate.

Q. Now, the Southern Pacific resolution declaring a dividend which was adopted on the same date was as follows:

"*Resolved*, that a semi-annual dividend of $2.50 per share, to be known as first dividend, be, and such dividend is hereby declared on the common capital stock of this company, payable October 1st, 1906, to bearers of dividend warrants No. 1, annexed to certificates representing such stock, upon presentation and surrender of such warrants to the Assistant Treasurer of this company at his office, No. 120 Broadway, New York.

The Chairman stated that, as a number of the directors were unable to attend the meeting, it seemed proper that announcement of the dividends should be deferred until they could be informed of the action taken at the meeting. And he suggested, therefore, that the announcement and publication of the dividend and any other action deemed necessary, be referred to the Executive Committee. Whereupon, upon motion duly made and seconded, it was unanimously resolved, that the Executive Committee be, and it is hereby empowered to announce and publish the declaration of such dividend at such time and make such provision for the payment therefor as the said committee may deem appropriate.

1341 The Executive Committee met at 3 o'clock or some time next day."

A. I don't think exactly the same time.

Q. Well, within a few moments?

A. Yes.

Q. And there were present at that executive meeting Messrs. De Forest, Harriman, Lovett and Stillman, only one different director from the Executive Committee which met in the Union Pacific?

A. That might be.

Q. Is there any other instance in the history of the Union or Southern Pacific since you have been connected with them, when any dividend was declared or increased, that the announcement was deferred to be given out by the Executive Committee?

A. No, I don't remember. I don't know whether there was. Was there, Mr. Millar?

Mr. MILLAR. Yes, it has been generally given out by the Executive Committee on the Stock Exchange next morning.

WITNESS. On the following morning?

Mr. MILLAR. Yes.

WITNESS. Not the same day?

Mr. MILLAR. Not regularly the same day.

WITNESS. Mr. Millar tells me it has been usually our method of referring it to the Executive Committee and that usually they announced it to the Stock Exchange the next morning.

Q. But this was announced the second morning?

A. Yes. The reason for that I have given, because I did not happen to be at the office that morning, on account of my going to a funeral, to attend the Executive Committee as usual.

1342 Q. Was there any other reason for deferring the action of the executive committee until 3 o'clock in the afternoon?

A. Not that I know of.

Q. Was there any reason for deferring the announcement of the dividend for two days other than that?

A. Well, it had to be deferred until the Executive Committee had acted.

Q. You announced to the meeting that you thought it should be deferred until you could inform the absent members of the Board of Directors of the action taken at the meeting. Whom did you inform of the absent members of the board of each one of these companies?

A. Well, I particularly, as I remember, telephoned to Mr. Hughitt in Chicago and got his answer. I inquired the whereabouts of the other two Chicago directors. Those were the ones that I had in my mind, because they were the ones who lived farthest away and might not have been able to have gotten to the meeting in August. I found Mr. Earling was too far away to be communicated with, and Mr. Valentine, the other Chicago director, was ill.

Q. Mr. Ames, Mr. Cornish, Mr. Hughitt——

A. Mr. Ames, I believe, was telephoned to at Boston, and found to be away on a yachting trip; that is my recollection.

Q. Mr. Cornish was absent?

A. That may be.

Q. Mr. Willcox, Mr. Appleton, Mr. Smyth and Mr. Hughitt.

A. Mr. Willcox was absent because of the death of his brother.

Q. And in the Southern Pacific meeting, Mr. Cornish, Mr. Hughitt, Mr. MacKay, Mr. Willcox and Mr. Mills, whom of those

1343 did you consult?

A. I don't know as I had any intention of consulting with any of those.

Q. The resolution said it was deferred because you thought they should be consulted.

A. Does it say so? in the Union Pacific as well as the Southern?

Q. Yes.

A. Mr. Mills' son was at the meeting, and I suppose he could confer with his father about it.

Q. You said you deferred the action so you could consult with them?

A. No, so they could be informed.

Q. So they could be informed of the action taken at the meeting?

A. That is right, that was the intention, and that was carried out so far as possible.

Q. That is the same language as used in the Union Pacific. Now, if they knew in August or in July that there was going to be an increase in a dividend, why was it necessary to defer the announcement

of the dividend to consult with them again, especially as you only consulted one?

A. It was impossible to reach anybody else.

Q. What was the object of reaching anybody? It had been declared absolutely, hadn't it?

A. Yes.

Q. To be paid on a certain date?

A. Yes.

Q. Why should it not have been announced then and there?

A. Because we did not choose to. We chose to take the usual course of having the Executive Committee act on it.

Q. Will you produce the resolution showing the usual course of the dividend——

A. That is so, isn't it, Mr. Millar?

Mr. MILLAR. At times the dividends were declared by the
1344 committee and at other times by the board.

WITNESS. Sometimes, he says, the committee has declared the dividends and sometimes the board.

Q. Well, now, when the board declared the dividend, did not the board announce it immediately, at all times before?

A. I don't know. Mr. Millar, the secretary, says the custom has been to send the letter to the Stock Exchange the next morning, and this was an unusual thing, Mr. Kellogg, and it was left to the Executive Committee to make the announcement as best it could.

Q. Why an unusual thing?

A. And it was thought that it would meet the next morning and the announcement would be made the next morning, at least that was in my mind, unless I heard something from some other member of the board.

Q. Why an unusual thing?

A. Well, it was unusual to increase our dividend, to that extent, and it was the first dividend of the Southern Pacific, and it was a little staggering; it was staggering to us, so there was a good deal of discussion about it, and it was a new era in the history of the Southern Pacific, the first dividend that had been paid on it; and the method of handling it and announcing it was thought best to be left to the Executive Committee. It was a coincidence.

Q. In your opinion, Mr. Harriman, was the dividend on the Southern Pacific justified by its earnings?

A. Yes, sir. Yes, by its earnings and reduction of the cost of labor and materials.

Q. In your opinion was the dividend on the Union Pacific justified by its earnings, or was it declared in order to put up the stock?

1345 A. Why, you have read the statement itself, that it was justified absolutely by the earnings. It has nothing to do with the stock market in any way whatever.

Q. Then why did you care whether it was announced the next morning or the second morning, or before the opening at London, or any other place?

A. I think the record practically shows it, that we did want to have some of the other members informed, and if there was any objection on the part of any member of the board, that could be informed of it—and as I said I had in mind the absent member of the Executive Committee; I don't know whether he was at the July meeting or not.

Comr. LANE. Have you any knowledge or did you have at that time, of any pool in which any of the directors of the Southern or Union Pacific were interested in the sale of the stock?

WITNESS. No, I don't believe any such pool existed.

Comr. LANE. Were there any heavy speculations in that stock, to your knowledge, in the intervening days, between the 17th of August and the date in July when the notification was given that there would be any such dividend?

WITNESS. Not to my knowledge.

Comr. LANE. Not to your knowledge?

WITNESS. Not to my knowledge.

Comr. LANE. But you do not know of any combination of men who were interested in the Union or Southern Pacific who bought heavily in that stock between July and August?

WITNESS. No, sir; I do not. I don't think there was any occasion for it, because I think the people interested in Union Pacific
1346 had been holding their stock for a long time before. I think they all appreciated the value and that there would come a time when we could have returns from the Southern Pacific and there would be continually increased earnings in the Union Pacific, and the change in its management would make it possible. It would not be necessary for them to make any such speculation between July and August. I do not say they did not.

Comr. LANE. But you do not know any individual director in either company?

WITNESS. I haven't any idea whether there was anything of that kind or not. I know there was some appreciation in price, and the whole market went up. I might say that one of the influences which induced the declaration of this dividend was that by the middle of August the outlook of business for this year had been pretty well determined; that is, the crops had gotten far enough along so that we could tell pretty well what we would do. In July it did not look quite so well. In July I think the market was quite depressed, if I remember right. I think there was a drought or something that was on, and after that the conditions changed.

Comr. LANE. Do you remember that the stock appreciated very rapidly after that?

WITNESS. After July?

Comr. LANE. After August 17th.

WITNESS. After August 17th it appreciated because of the payment of this dividend and the publication of the statement.

Comr. LANE. Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the
1347 17th of August that appreciated?

WITNESS. We——

Mr. MILBURN. Just a moment, please. I do not know enough about the fact, but I think, to be consistent in my position, that that is obviously an improper question.

Comr. LANE. It certainly is not obviously improper under our ruling.

Mr. MILBURN. I do not mean under your ruling, but from my position, that is what I mean.

Comr. LANE. Yes. I do not understand that he declines at all to answer this line of questions.

Mr. MILBURN. Mr. Harriman must take his own responsibility. I am simply here maintaining the consistency of the position that has been taken for him, Mr. Commissioner, and I do say that this question is entirely different from any question that the Commission has passed upon, because whether anybody bought stocks of the Union Pacific at this time or not, to my mind can not have the remotest bearing on any question that is before us.

Comr. LANE. Before the announcement had been made by the directors and the other stockholders that there would be a dividend?

Mr. MILBURN. I do not see how that would bear on rates or interstate commerce. It might bear on the morality of men, it might bear on the ethics of men. I don't know, if a man is president of a railroad and knows that its earnings are increasing or developing, anything which prevents him from buying stock.

1348 Comr. LANE. I think the position we will have to take on that matter, consistent with our previous rulings, is that where an interstate commerce carrier declares a dividend, we have a right to investigate into all the acts of those who are acting as trustees for the road.

Mr. MILBURN. That is, that there is a right, as I understand it, to call upon every man who may happen to be a director of that corporation, to show his private transaction for a week or a month, or three months?

WITNESS. Every stockholder was notified of the earnings every month, just the same as every director; as soon as they were in they were sent out, and it is our custom to send to every stockholder and mail to his address the earnings as they come in every month, so that every stockholder—and then they were published in the papers—had the same information as the Board of Directors, as to the earnings.

Comr. LANE. But the information given to the directors in July was private knowledge?

WITNESS. They could not have any knowledge of that, but they knew from the earnings, the same as we did, that there was a possibility of increase in dividend. In fact, the papers began to notice it, if I remember right, that there was a possibility and probability of a dividend on the Southern Pacific, and also a probability of increase in dividend on the Union Pacific; unless some director may have

said something about it—I did not, and I doubt whether they did; but simply taken from the statements sent out each month by the company.

1349 Commissioner LANE. I asked you before, when objection was made by your counsel, and of course you have the right to decline to answer——

WITNESS. I should let that take the same course; I have bought Union Pacific all my life, and I could not tell you whether I bought any in July or not. I have bought Union Pacific ever since I have had any connection with it; it seems to me I have done nothing else, and I have advised everybody else to buy it too.

Commissioner LANE. And you decline to answer that on the direction of counsel?

WITNESS. Yes.

Commissioner LANE. And if we should direct you to answer, on his advice you decline?

WITNESS. Yes.

Q. The stockholders did not know that a ten per cent dividend would be declared on the common stock of the Union Pacific and five per cent. on the stock of the Southern Pacific, did they?

A. They could not know until it was done——

Q. You know——

A. Wait a minute. I didn't know. How could the stockholders know until it was done? Wouldn't it be just as certain if they were informed that it had been done as if they had been informed that it would be done?

Q. You know, Mr. Harriman, that if you said so there would be a 10 per cent. dividend on the Union Pacific?

A. I had very grave doubts in my own mind until I had the backing up of the Board of Directors and Executive Committee.

1350 Q. But you knew when your mind was made up, that would settle it, didn't you?

A. No, I did not. I have got some pretty strenuous associates with me.

Q. Have you ever been overruled on one single thing from the beginning of your management of the Union Pacific up to the present time?

A. I have not been overruled by you.

Q. No, sir. I am incapable of it.

A. Well, I don't know.

Q. Your actions in every respect, everything you have done and recommended to the board, have been carried out?

A. I should be very proud of it, if it had been. The results as shown by the statement you have read, I should be very proud if I could say that.

Q. Now, you knew a long while before that dividend was declared whether it would be 10, or 5, or 6 or 7 per cent, didn't you?

A. Well, I can't say that I am willing to answer that question. I think those things were passing in my mind, as they were in the

minds of other directors. I certainly could not have done it without the assent of the majority of the board, and there was not a dissenting voice; there was some discussion, but not a dissenting voice.

Q. The statement which you say is sent to the stockholders is the usual monthly statement of the gross earnings?

A. Gross earnings and net, each month.

Q. The net is not known for——

A. Well, we make the estimate of the last month, you know.

Q. Yes, it is an estimate.

A. The last month is an estimate.

Q. Is that mailed to every stockholder, the net, every month?

1351 A. Every month.

Q. But the stockholders of course did not know what the Board of Directors might declare?

A. Mr. Kellogg, what is the use—how could they have trusted the management of their affairs to the Board of Directors?

By Commissioner CLEMENTS.

Q. It is a fact, is it not, that all the transcontinental roads through a joint agency, that is who published their rate, did make large increases, or increases on a large number of commodities, both east and west?

A. I am not conversant with that. I think they did, to meet the conditions, because of increased cost of labor and material and increased cost of operation.

Q. Well, you have said this morning, I think, that it would not be necessarily wrong for the road, to earn fifteen per cent. on its capitalization?

A. Why, certainly not.

Q. Where would you fix the limit?

A. One hundred per cent. if you like.

Q. From a fair, just standpoint?

A. As long as it is properly conducted and gives proper facilities for the proper transportation of its business, and no higher rate than is relatively charged by any other railroad, it is within the bounds of propriety.

Q. How far would you go now, if it was done that way, before you would say it was an excessive and extortionate profit?

A. It could not be an extortionate profit—an extortionate charge you might say—it is the charge, not the profit, which

1352 is extortionate. If one method of financing or managing a road or operating a road puts it in a better position than some of the other roads, there is no reason why its stockholders should not receive the benefit therefrom.

Q. How much, one hundred per cent?

A. It would not make any difference. I do not think the percentages bear on that. What are you going to do with it? Are you going to donate it to the government or what?

Q. There are several ways by which you might let the shippers keep it.

A. If you will let us reduce our rate and don't let any other railroad reduce their rate, we will get all the business.

Q. Now, you say as long as the road does the service, and does it as cheap as any other under like conditions and circumstances, that it does not make any difference how much they make?

A. I don't think it makes very much difference, if the same rates prevail on every railroad, and every shipper has the same rate.

Q. Now, if all the railroads by some concerted means make the same rates on the same commodities between the same points, how would you ever find the standard of comparison by which to test the validity of your rates, because your road and the other roads have all made the same rate on the same article at the same time by agreement, and not by competition?

A. Well, I think——

Q. Your rates would justify theirs, and theirs would justify yours, according to your statement?

A. Possibly theirs would justify ours, I don't know that
1353 they would, or ours might justify theirs.

Q. Well, by comparison——

A. (Interrupting.) That is a pretty broad question, I think there should be some regulation. If, as I stated to Mr. Lane, the railroads were legally entitled to make agreements——

Q. When you say make agreements——

A. (Interrupting.) Permanent agreements.

Q. When you say make agreements, you mean make rates?

A. No, agreements for transportation, agreements for the establishment of lines upon which the traffic could be conducted at less cost.

Q. There is not anything in the law that I know of against your making agreements with connecting lines.

A. But I mean agreements that would be permanent and standing, for ninety-nine years or one thousand years.

Q. What kind of agreements do you mean?

A. Operating agreements.

Q. Fixing rates between competing lines?

A. No; not necessarily between competing lines, but operating agreements where parts of lines could be used, and distribution of traffic.

Q. Do you mean distribution of traffic between the different competing lines?

A. Distribution of traffic between the different competing lines under proper regulation.

Q. Now, for what purpose would you have the roads do that?

A. For the purpose of reducing the cost of the business.

Q. Does it not also have the effect of preventing the reduction of rates by one road, if the road enters into an agreement by

1354 which each road is to get so much anyhow? What inducement is there for any road to make a lower rate?

A. The same inducement there would be for any merchant or manufacturer who has to reach a market with his goods. So long as you gentlemen are in existence I don't suppose there would be much difficulty in arriving at some plan, whereby those matters could be regulated, provided the railroads had the counter right to distribute their traffic where it could be handled to the best advantage.

Q. Don't you think that would tend to enable all the railroads to charge all that the traffic would bear?

A. No; I don't think so. I think it would enable the railroads to conduct their traffic at less cost than they are at present, and would enable them in the end to do it at less charge than is now made.

Q. Well, if they have a right to agree to divide the business and cease competition, and there is no need then to compete, and so long as the property will bring more than freight rate, isn't there a constant tendency on the part of roads, and a perfectly natural one, to increase their profit?

A. Suppose they did increase their profit, if it did not injure anybody?

Q. How can you take it without taking it from somebody? Does not the consumer or the shipper pay it?

A. The shipper or consumer may pay it, but if he gets a proper profit on his business should not the railroad get one too?

1355 Q. What is to become of the consumer who consumes the goods that the shipper ships and the railroad carries?

A. The consumer in order to get the withal to purchase what he buys from the shipper, has to produce something else and sell it to some other consumer; it is rolling around in a ring all the time.

Q. Do you think there is in the domain of good morals any limit to which the carrier may take their profits?

A. That is not it. I think you are going beyond the line. I maintain that any transportation line that could get itself into the condition where it could transport cheaper than other lines similarly situated, is entitled to all the profit it could make, provided it charged no more therefor than the other lines were charging for similar business.

Q. If they all agree on what they will all charge, what is to hinder them from——

A. (Interrupting.) I don't believe they will all agree, I don't believe they ought to have the right to agree on anything they should do without proper regulation; and I so stated this morning, in answer to Mr. Lane's question.

Q. That regulation would be to put a limit on the profits they might make, by limiting the charges.

A. Yes, you might limit the rate at which all the railroads should conduct their traffic, but you should not say that one railroad should charge so much, and another railroad should charge so much, more or less; but if the rates were fixed so that all railroads charged the same

reasonable rates, why, any railroad that got itself in proper
1356 condition to take transportation at less cost, that railroad should receive the full benefit of it.

Q. You did not claim they should be all allowed to join together and divide the business or make rate agreements so as to——

A. (Interrupting.) I do say this, that there should be some act passed so as to enable the railroads to make some such agreements, under proper regulations well known to the public and well known to some body constituted as you gentlemen are, and under authority of some such body—that there should be some such law whereby the railroads can transact their business lawfully as well as intelligently.

Q. You think that authority ought to be vested with the power of putting a limitation on the charges of railroads?

A. Proper reasonable charges by the railroad, I have no objection to that; but the point I made was, that one railroad should not be regulated to the exclusion of other railroads.

Q. Well, the Government gets money for 2½ and 3 per cent and good securities of other concerns are taken at a premium, at 3 and 4 and 5 per cent, and——

A. (Interrupting.) Not many of them.

Q. And it is usury for a bank or other persons to take more than 6 or 7 or some other amount that is fixed by legislation. Now, is there no point of fairness and good morals and principles that governs in all lines of business and enters into legislation and other matters—is there no point beyond which the rates of a railroad should be shown to be unreasonably high because of an excessive profit?

A. Do you think between Omaha and Denver, for instance,
1357 if the Burlington & Quincy took its traffic for less cost than the Union Pacific could, that the rate on the Burlington & Quincy should be reduced, and not on the Union Pacific?

Q. You have not quite answered my question, and have asked me one.

A. I know, but I am trying to answer your question by asking one.

Q. Do you think there should be any limit or ought not to be any limit?

A. On all railroads?

Q. Any railroad.

A. Well, I don't think you can specify on one railroad. It depends. The charges on one railroad must relatively be the same as on all railroads doing similar business.

Q. The question you put to me, if it was a dealer in other articles out here on the street, the one that could not do it at the lowest price would have to take the lowest price made by his competitor, whether he could afford to do it or not.

A. Then he would go into bankruptcy, maybe.

Q. That might be so.

A. One railroad might be capitalized for less than its worth, or its credit might be higher, and it might issue bonds at a low rate,

which would enable it to raise capital at a lower rate than the other road; the stockholders ought to get the benefit of the credit.

Q. Do you think the Government or the people should guarantee to keep every railroad, whether built improperly or not, out of bankruptcy?

A. I think it would be to the interest—not of the Govern-
1358 ment—but to the interest of the people, that that railroad should receive a fair return to enable it to conduct its business at a profit.

Q. You would hardly think it was justifiable that the public should be required to pay such rates as to guarantee that no railroad, however improperly operated, should be kept out of bankruptcy——

A. (Interrupting.) There should be allowed a charge——

Q. (Interrupting.) On a basis which could do that?

A. I think that when a transportation property has developed its system like any manufacturer, so that it can produce the goods for less cost than another, it should not be forced to charge less for its goods than the others (similar transportation lines) do for theirs.

Q. Ought the charges then to be on the basis of that one which is the worst located and constructed and operated?

A. It should be on a fair and reasonable basis for all lines alike.

By Commissioner LANE:

Q. What year did you take up the Union Pacific?

A. 1898.

Q. From that time you have increased your holdings in railroads until your line extends out to Portland, and by water from there across the Pacific; takes in the line then from Ogden to San Francisco, and from there across the Pacific to the Orient; and from San Francisco back down and south to New Orleans, and from New Orleans to New York by water; you have a certain control over the Illinois Central and a certain control over the Chicago &
1359 Alton; you have approximately $30,000,000 of stock in the Baltimore & Ohio; you have a large holding in the New York Central; and all these holdings trace from the original taking over of the Union Pacific, and the issuance of the $100,000,000 of bonds; is that so.

A. All these latter holdings trace to the proceeds of the sale of the Northern Pacific and Great Northern.

Q. All the profits which you have made out of that transaction?

A. Well, out of that transaction, but that was not out of traffic; it had nothing to do with rates or income from traffic. It was only the handling of the——

Q. The handling of the money which you realized upon the sale of securities of the Union Pacific road?

A. That is all a reinvestment.

Q. Where is that thing going to stop?

A. I don't—I think it has stopped. I don't think we have any more—I would go on with it if I thought we could realize some-

thing more than we have got from these investments, I would go on and buy some more things.

Q. Supposing you concentrated two or three more you might take some other line and go right into New York?

Mr. MILBURN. Why not?

A. Suppose we had a line from New York to San Francisco; I suppose that is what you mean; would it not be a good thing—not that we have any idea of doing it—but would it not be a good thing?

Q. Supposing that you get the Santa Fe.

A. You would not let us get it.

Q. How could we help it?

1360 A. How could you help it? I think you would bring out your power to enforce the conditions of the Sherman Anti-Trust Act pretty quick. If you will let us, I will go and take the Santa Fe tomorrow.

Q. You would take it tomorrow?

A. Why, certainly I would; I would not have any hesitation; it is a pretty good property.

Q. Then it is only the restriction of the law that keeps you from taking it?

A. I would go on as long as I lived.

Q. Then, after you had gotten through with the Santa Fe and had taken it, you would also take the Northern Pacific and Great Northern, if you could get them?

A. If you would let me.

Q. And your power, which you have, would gradually increase as you took one road after another, so that you might spread not only over the Pacific coast, but spread out over the Atlantic coast.

A. Yes; but hasn't your organization increased its power?

Q. It undoubtedly has. That is what I am coming to. Do you think the law itself should intervene there and should restrict you in your power to use money raised for railroad purposes and raised on railroad securities to the actual improvement of that railroad, or should you be allowed to use it for the acquisition of other railroads?

A. I think we should be allowed to use it for the acquisition of other railroads, under proper regulation.

Q. Now, what——

A. One minute. What I mean by that is this. This is probably an illustration which I might make. As the law exists, railroads are prevented from consolidating or combining. If interests in certain lines have been forced to purchase the securities of other rail-

1361 roads in which they wanted some dominating influence—not that we have purchased since the 1st of July; the purchases we made since the 1st of July were not specially for that purpose—but take the instance of the Burlington & Quincy and Great Northern, and Northern Pacific; it was not a good thing for the Northern Pacific and the Great Northern and Burlington, or for the Northern Pacific and Great Northern to buy all the stock and eliminate from the situation 15,000 or 16,000 small stockholders; that is what they did.

They turned those 15,000 or 16,000 small stockholders from stockholders into creditors, so that they were eliminated from the development of the business on the lines of railroad. They did not care anything about it as long as they got the interest on the bonds. Now, if we had some legal method whereby the Burlington and Northern Pacific and Great Northern, under some legal restriction, had been permitted to make contracts by which they could approximately have accomplished the same thing, it would not have been necessary to issue the $200,000,000 of bonds to acquire the Burlington stock, and the ownership of these securities would have been in the hands of the people, where I believe it is better it should be.

We have never gone to the extent of eliminating, so far as we could possibly avoid it, ownership by small people in our property; we have been partners of theirs and have tried to be partners of the public.

Q. And you want the powers of the Commission still further increased——

A. (Interrupting.) I cannot say that I do, unless we have our powers increased.

1362 Q. You want your powers increased so that you can combine, and you want us given power in the first place to insure the rate——

A. Yes, to regulate and go hand in hand with us. There is no other country in the world where the business interests are so antagonized by the Government as this one. You take any other country in the world where the transportation lines are as important a part of it as they are in this country, they go hand in hand. Even Japan, poor little Japan—not poor little Japan, but a small nation like that, the Government takes a practical interest in encouraging transportation facilities.

Q. There is no other government in the world that has given so much land and money to the railroads as this——

A. But there is no other country in which railroads have improved the country as in this country.

Q. Is there any other country in the world where transportation lines have yielded such large profits?

A. I think if you will go back twenty years, I think you will find the average profits of these lines have not been so very large. From 1894, or from the panic of 1893 until 1898, I think you will find that about 70 per cent of the securities of the railroads of this country were without dividends, and——

Q. Certainly——

A. Wait a minute. In 1898, if you will remember, it was just at the time in 1897 and 1898, when all these bankrupt properties were being reorganized and paying assessments instead of dividends. You talk about 10 per cent dividend on the Union Pacific. When

1363 I took hold of the Union Pacific, we were just paying 10 per cent assessment on our stock.

Mr. KELLOGG. And getting preferred stock for it?

WITNESS. And getting preferred stock for it, which was problematical as to its value.

Mr. KELLOGG. And they were getting their full amount of the common stock which they had in the old line?

WITNESS. Yes, but it was problematical what it would be worth. But they were called upon to pay a ten per cent assessment on a stock the market value of which was only about 30 per cent.

Q. Is it not a fact that every regulative act upon the railroad is the result of some policy pursued by the railroads themselves?

A. I believe you are right. I think the railroads themselves are more to blame than any factor, for the condition that exists today, the antagonisms between the people and the legislatures and the railroads themselves. I think the management of the railroads themselves are more or less to blame than any other cause, and they had a right to agree and they had the right to get together, but they were always squabbling and never got together, and they lost the respect of the communities which they served. I have no apologies to make for the railroads at all.

1364 PAUL MORTON,

being duly sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE.

Q. Mr. Morton, where do you live?

A. I live in New York.

Q. What is your present business?

A. Insurance.

Q. You are president of the Equitable Insurance Company?

A. Yes, sir.

Q. What experience, if any, have you had in railroading?

A. I have had an experience commencing in the latter part of 1872 and lasting until 1904.

Q. In what different positions were you occupied during that time?

A. I was clerk, chief clerk, and assistant general freight agent.

Q. Of what road?

A. The C., B. & Q.

Q. Headquarters where?

A. Chicago. Afterward I was its general passenger agent, then general freight agent, and afterwards, commencing in December, 1895, I became vice-president of the Atchison, Topeka & Santa Fe road, in charge of its commercial interests, its traffic department.

Q. You were the head of the traffic department of the Santa Fe from 1895 until you ceased railroading?

A. Yes, sir.

Q. That was when you went in the Cabinet, in 1904?

A. Yes, sir.

Q. Have you at present any relations as an officer or director of any railroad company?

A. I am a director of the Atchison Railroad.

1365 Q. During those years, from 1872—when did you say you began railroading?

A. December, 1872.

Q. During all that time were you engaged on the traffic side of railroading as distinguished from the operating?

A. Yes, generally on the traffic side, largely on the traffic, mostly traffic.

Q. Was there an interregnum in which you were connected with the Colorado Fuel & Iron Company?

A. From 1890 to January 1, 1896, I was vice-president of the Colorado Fuel Company.

Q. And were you during a portion of that time also engaged in the railroad business?

A. In an indirect way. I had much to do with the railroads, but I was on the other side of the traffic proposition.

Q. You were a shipper then?

A. I was a shipper.

Q. Were your headquarters at Chicago during all the time you were in the railroad service?

A. All the time while I was an officer of the railroad.

Q. During that time did you become familiar with the transcontinental freight business?

A. In a way, yes, sir.

Q. Was that a large part of your business, to be familiar with it?

A. As an officer of the Atchison system it was quite a large part of my business to become acquainted with it: as an officer of the Burlington it was incidental.

Q. What was the westernmost point reached by the Burlington while you were an officer of that company?

A. Denver.

Q. Did transcontinental traffic move by way of Denver over the Burlington?

1366 A. Yes, quite largely: it went via Omaha, via Council Bluffs, and also via Denver.

Q. If it went via Omaha or Council Bluffs to what road was it delivered?

A. Union Pacific.

Q. If it went to Denver to what road was it delivered?

A. Denver & Rio Grande.

Q. What other roads were there, we will say up to 1901, running to Omaha, delivering freight to the Union Pacific?

A. The North-Western, the Rock Island, the Chicago, Milwaukee & St. Paul, the Wabash, the Missouri Pacific, and the Illinois Central was finished there, but just what year I could not tell.

Q. Was all of the transcontinental traffic that reached Omaha over these various lines taken to the West over the Union Pacific?

A. I should say a very large proportion of it was. Some of it may have gone on West to Denver and been delivered to the D. & R. G.

Q. But the bulk of it that went to Omaha was turned over to the Union Pacific?

A. Yes.

Q. Now I am addressing your testimony to a date anterior to the spring of 1901. In those days where did the Union Pacific reach the Pacific Ocean, if at all?

A. I do not think the Union Pacific reached the Pacific Ocean at all.

Q. Not the Union Pacific proper, but didn't it by proprietary lines?

A. I think it had a proprietary interest in the Oregon Short Line and the Oregon Railroad & Navigation Company and reached the Pacific Coast at Portland.

Q. Ocean steamers go up to Portland, don't they?

A. Small ones.

Q. And at that time was the Union Pacific also built to Ogden?

1367 A. It was also built to Ogden.

Q. And from there continued to San Francisco over what line?

A. Over the Central Pacific, which was a part of the Southern Pacific system.

Q. Where did the Atchison, Topeka & Santa Fe have its eastern terminus when you went with the road?

A. Chicago.

Q. And at that time where was its western terminus, that is, that it owned?

A. The western terminus was San Diego.

Q. What point was its westernmost station on the road to San Francisco?

A. A station called Mojave.

Q. Is that the same place that is now called Bakersfield?

A. No, that is 60 odd miles, I think, east of Bakersfield. Bakersfield is over on the other side of the Tehachapi Mountains; Mojave is on this side.

Q. At Mojave did the Santa Fe at that time make a connection with some other line?

A. It made a connection with the Southern Pacific.

Q. For San Francisco?

A. For San Francisco and all points that the Southern Pacific reached.

Q. When did the Santa Fe build its own line into San Francisco?

A. It didn't build. It bought the San Francisco & San Joaquin Valley Railroad, which runs from Bakersfield to Point Richmond opposite San Francisco.

Q. On San Francisco Bay?

A. On San Francisco Bay.

Q. At that time you made a contract, did you not, with the Southern Pacific for the joint use of that road over the Tehachapi Pass?

A. Yes.

Q. How long time?

A. It was a 15-year contract, I think.

Q. What year was that?

1368 A. I think that was about 1897 or 1898 or 1899, I can't tell exactly.

Q. When I spoke of the road over the Tehachapi Pass I meant the line from Mojave to Bakersfield.

A. I understood it so.

Q. That is a 60-mile gap?

A. 68 miles as I remember it.

Q. Now, at the time you came in charge of the traffic of the Santa Fe in 1896, did the Southern Pacific have its line through to Galveston and New Orleans from San Francisco?

A. Yes.

Q. And did it then have the boat-line to New York from those ports?

A. Yes, it did. It worked in conjunction with the Morgan Line of steamers; I think it owned it at that time.

Q. In addition to the transcontinental lines that you have already mentioned, what other transcontinental lines were there prior to 1901?

A. There was the Northern Pacific and the Great Northern and the Canadian Pacific.

Q. What lines were in competition at that time for the transcontinental business?

A. They were all more or less in competition with each other.

Q. Was the line from Omaha to San Francisco, composed of the Union Pacific and the Central Pacific, in competition with your line—the Santa Fe?

A. Yes.

Q. And also with the Sunset Route of the Southern Pacific?

A. On some business it was, and on some business it was not.

Q. What business was there in which it did compete with the Sunset Route?

A. On the business from this section of the country it was competitive.

Q. How far west did that competition extend?

A. I think it extended as far west as Pittsburg and Cin-

1369 cinnati, and possibly in some instances as far as Chicago.

Q. What other routes were there to the Pacific Coast prior to 1901, if any, that used a part of the Sunset line of the Southern

Pacific, other than the line made up of the boats to New Orleans and Galveston, and the Southern Pacific from there?

A. I think all the lines running into New Orleans had connections with the Southern Pacific.

Q. Can you name some of them?

A. Well, there is the Louisville & Nashville, and the Queen & Crescent, and the Illinois Central, and other lines reaching that city.

Q. Were there any connections made at El Paso by any lines?

A. Yes; the Texas & Pacific connected at El Paso with the Southern Pacific west of El Paso. I do not think the Rock Island was finished to El Paso at that time, prior to 1901, but sometime about that year they finished a line there. The Atchison had a road down to Deming, made a connection with the Southern Pacific at Deming, New Mexico, about 100 miles west of El Paso, and did a little business that way—not much.

Q. Had the Rock Island built into El Paso prior to the time you left the railroad service in 1896?

A. Yes.

Q. Was that road made up of the Rock Island and the Southern Pacific engaged in transcontinental traffic?

A. It was.

Q. And was that competitive with these other lines?

A. It was.

Q. Did the Rock Island, prior to the time it built into El Paso, have any connection with El Paso or with some point in that neighborhood on the Southern Pacific, over other lines?

1370 A. The Rock Island connected with the Union Pacific at Omaha and with the Denver & Rio Grande at Pueblo. The competition—may I say a word?

Q. Yes, go ahead.

A. The competition generally considered among railroad men was east of Ogden and El Paso. The situation was to a very large degree dominated by the Southern Pacific. They controlled the rate-making power to a very large degree, and all of these lines which published California rates did so under the general guidance and advice of the Southern Pacific Company, which was a connection of them all, except the Atchison to Southern California.

Q. Taking into consideration the situation of all those railroads you have mentioned and with which you are familiar, will you state whether in your opinion, in the spring of 1901, prior to the time that the Union Pacific purchased a large amount of stock in the Southern Pacific, the Union Pacific and the Southern Pacific were competitors for transcontinental business?

A. They were both competitors and connections.

Q. They were competitors, were they?

A. Yes.

Q. Now, Mr. Morton, how did the rates in this eastern territory compare over the two routes to the Coast, that is, by way of the Sun-

set Route to New Orleans, the boat-line, and the Sunset Route to California and over the Union Pacific with its connections, and the Ogden route?

A. The rates were supposed to be the same.

Q. Were they the same during all the time that you were railroading, after the Morgan Line was established, so far as you know? I am speaking only of through business to the Coast.

1371 A. As I remember, the Morgan Line started out by making a differential rate of 10 per cent less than the overland rate, on account of their mixed line, being water and rail, but that was changed some time after the line was inaugurated, and the rates were the same after that.

Q. How far west of New York did the rates from New York apply by the Morgan Steamship Line?

A. Well, that was always a question. I think in some instances as far as Pittsburg; I am not sure that it did not extend west of there at other times.

Q. How was that haul from Pittsburg east to the seaboard, paid?

A. That was by absorption of the charge to New York.

Q. It was absorbed by the Southern Pacific interest, either the boat-line or the railroad?

A. By the through line.

Q. By the through line?

A. Yes.

Q. In addition to this transcontinental competition, were these two systems, the Union Pacific and the Southern Pacific, competitors as to any other traffic, such as Colorado common points?

A. The Morgan Line of steamers as far as Galveston was a competitor with the Union Pacific Railroad, so far as securing business for Colorado was concerned. You might say that the competition was really east of the trunk lines, what they call the Iowa trunk lines, east of Missouri. The competition up to Galveston was competitive with the lines east of the Missouri River.

Q. How was the business handled into Colorado from Omaha when delivered by the eastern lines?

A. By the Burlington or the Union Pacific?

Q. Yes; and how was the business handled into Colorado
1372 common points and from the boat-line at Galveston?

A. It was handled by various lines. It might have been handled by the Atchison, which has a line direct from Galveston to Denver; or it might have been handled in connection with the M. K. & T. and the Colorado Southern, or in connection with the I. & G. N., and the Chicago, Rock Island & Pacific. There were several lines from the Gulf to the state of Colorado.

Q. Did any of that traffic go by way of New Orleans as well as by Galveston to Colorado common points?

A. Yes, I think so, formerly.

Q. Yes, I mean formerly.

A. Yes.

Q. And over what lines did it move from New Orleans?

A. It may have gone three or four different ways; it may have gone Southern Pacific up to some junction point in Texas with the Colorado Southern, or it may have gone by the Illinois Central to Kansas City, and west from there over the Union Pacific, the Burlington, the Rock Island, or the Atchison.

Q. Take the territory west of Pittsburg, or take, say, Pittsburg common points and Cincinnati common points: what different ways would the traffic move to the Coast?

A. There were a great many routes by which it could have gone. From Pittsburg it could have gone via Chicago; it could have gone from there via St. Paul or via Council Bluffs or Omaha or via Denver or via Kansas City or via El Paso, or it could have gone south via New Orleans, and gone west from there; or it could have gone through St. Louis and out that way. There were a great many gateways for it to travel and through which traffic could have found an outlet.

1373 Q. Now, what about the line from Pittsburg or Cincinnati southwesterly to New Orleans, without going to Chicago at all?

A. It could have gone down the river to New Orleans and could have gone west from there, or it could have gone by rail.

Q. Do you know of any traffic moving down the Ohio and Mississippi Rivers to New Orleans and thence to the Coast?

A. One time I knew business did move that way. I cannot tell you of any specific traffic that did move, but I understood at one time that it was moving that way.

Q. What was the nature of the competition that existed, say, into Colorado common points between these different lines? How did they compete?

A. Each tried to get the others business.

Q. Was that the same with the continental business?

A. Yes.

Q. The competition you have mentioned?

A. The same kind of competition.

Q. Now, as to that business the Union Pacific did not use the Southern as a connection at all, did it?

A. What business?

Q. To Colorado common points.

A. I do not think I quite understood your question.

Q. You spoke of the Southern Pacific being both a competitor and a connection of the Union Pacific on continental business. Now was it a connection as to Colorado common points business? They did not use the Southern Pacific line, did they, to get into Colorado common points?

A. The Morgan Line of steamers was sometimes used.

Q. No, I mean did the Union Pacific use the Southern in any way to get into Colorado?

A. No, I do not think they did.

1374 Q. So as to that business they were not connections, but strictly competitors?

A. Competitors.

Q. Now, Mr. Morton, did you ever know of any competition from the north by way of boat-lines to San Francisco as against the all-rail lines?

A. Well, we once had competition with the Canadian Pacific.

Q. From what points, and how did they carry it?

A. The Canadian Pacific was an active competitor for business from all the eastern portion of the United States for San Francisco at one time, and operated on a differential rate.

Q. How did they handle the traffic—to what points?

A. They took it up via Winnipeg and out to Vancouver, and from there I think it went down by boat to San Francisco.

Q. And you say that they operated that long route under a differential tariff. Do you remember how much the differential was?

A. As I remember, it was 10 per cent.

Q. How long was that in, do you know?

A. Several years, I think.

Q. Do you know of the other lines to the north competing by means of boat communication with San Francisco?

A. I think the Northern Pacific has done a little business in that way.

Q. Business can be handled that way, can't it?

A. Business has been handled that way; in very small amounts, however.

Q. Mr. Morton, do you remember, when you were an officer of the Colorado Fuel & Iron Company, making a complaint as to rates on rails to the Coast from Pueblo?

A. I do.

Q. Did you investigate the movement of rails to the Coast
1375 at that time?

A. So far as it was possible for me to do so I did.

Q. Do you know whether at or about that time any steel rails had been moved to the Coast from Chicago by way of New Orleans?

A. I understand there was a shipment.

Q. Do you know how much it amounted to?

A. As I remember it was quite a substantial shipment, three or four thousand tons.

Q. How did it move?

A. It came to New Orleans by the Illinois Central, thence to San Francisco by the Southern Pacific.

Q. That is, the Sunset Route of the Southern Pacific?

A. The Sunset Route.

Q. During the time that you were railroading, prior to 1901, were you in the habit of attending meetings of the transcontinental traffic associations?

A. Yes, sir.

Q. Did you attend those meetings on behalf of both of the roads that you were connected with, that you have stated? I do not mean at the same time, but when you were connected with the "Q" did you attend those meetings for them or only for the Santa Fe?

A. Occasionally when I was with the C. B. & Q. I attended those meetings, and generally I attended those meetings after I became an officer of the Atchison, unless the meetings were in regard to detail work, which I had others to do for me.

Q. Now, at those meetings of the Transcontinental Traffic Association, prior to 1901, were the Union Pacific and the Southern Pacific separately represented?

A. Generally.

Q. When your line ended at Mojave and you went up to
1376 San Francisco over the lines of the Southern Pacific, was the Atchison competing for eastern business with the Southern Pacific?

A. I always considered it was.

Q. Was that competition active or passive?

A. It was active.

Q. And were you at the same time competing with the Union Pacific for transcontinental business?

A. Yes, with all the lines connected with the Union Pacific.

Q. Do you know when the divisions were made as between the Southern Pacific from Ogden to the Coast, and the Union Pacific to Omaha, and the other lines on east, how many years ago, and by whom they were made?

A. I think those divisions were made soon after the roads were completed. They may have been modified somewhat since, but they were practically made in the early '70's I should say.

Q. And did they continue substantially the same after that time?

A. Substantially, as I remember.

Q. You understood my question to refer to divisions between the connecting lines?

A. As between the Union Pacific, the Central Pacific and lines east of Council Bluffs and Omaha.

Q. Yes.

Mr. LOVETT. Divisions of revenue?

Mr. SEVERANCE. Yes, divisions of revenue.

Mr. LOVETT. Division of the rates.

Q. How was that divided? I do not care about the percentages, but it was based on some gateways, wasn't it?

A. Well, it was based on the equities of the case as they were seen by the different participants.

1377 Q. Now take a rate from New York, we will say, or Pittsburg, through to San Francisco, all rail. What were the division points? What were the gateways where the divisions were made?

A. Well, there were several gateways, but take the Chicago gateway. As I remember those divisions, the San Francisco rate allowed 22 per cent east of Chicago. That may have been modified afterward. That left 78 per cent to be divided west of Chicago. There was a deduction, I think, for the Omaha bridge toll, which was an arbitrary, and I am not sure there was not a deduction for some terminal charge at San Francisco. After that as I remember, the line east of Council Bluffs received 15 per cent.

Q. 15 per cent of the balance?

A. 15 per cent of the balance. And then there was another subdivision of the revenue or rate west of Omaha between the Union Pacific and the Central Pacific.

Q. Those are the divisions you had in mind in answering my previous question?

A. Those were the divisions I had in mind. I thought that was what you asked for.

Q. Yes, that is right. Now, in the matter of eastbound business, say the fruit traffic in Southern California: how did that move to the east previous to 1901—over what lines?

A. There were two lines out there, and the business moved by both of them. One was the Southern Pacific, which controlled the line via Ogden and the line via El Paso; and the other was the Atchison road, which had its own line.

Q. That is, it all started over the Southern Pacific—all that did not go over the Atchison?

A. Yes.

Q. Did the Union Pacific have soliciting agents in the
1378 field out there endeavoring to secure the routing of traffic by way of Ogden?

A. Yes, all of the lines east of Ogden and west of Chicago had soliciting agents out there.

Q. Now that brings up the question of soliciting agents. Prior to 1901 did the Southern and Union Pacific maintain soliciting agencies in the various large cities in the East?

A. I understand they did.

Q. What is the function of a general agent in a town like New York, for instance, for a transcontinental railroad?

A. It is to look after the welfare of that railroad, represent it, and try to secure as much business for it as possible at the tariff rates, and in every way to be the agent of the company.

Q. Personal solicitation to shippers?

A. Personal solicitation, settlement of claims, etc.

Q. That is the reason why the roads maintain these officers, is it?

A. Yes.

Q. Do all the transcontinental lines maintain offices in New York for that purpose, or did they prior to 1901?

A. I think they all do now. I believe that the Union Pacific and the Southern Pacific both have their agents here yet.

Q. And how about Pittsburg?

A. I could not tell in regard to that.
Q. How about Chicago?
A. I think they have one representation there.
Q. Do you know about the line by Panama, Mr. Morton?
A. I know there is a line by Panama.
Q. Do you know there was a line there prior to 1901?
A. Yes, sir.
1379 Q. How is that line made up?
A. There is a steamship line from the head of Panama and another line from the west coast of Panama to San Francisco.
Q. What was that line from the west coast to San Francisco?
A. You mean the Pacific Mail?
Q. Yes.
A. The Pacific Mail.
Q. The Pacific Mail Steamship Company?
A. Yes.
Q. Was that Panama line made up of the Pacific Mail on the Pacific Ocean and the Panama Railroad, and the steamers from Panama, or Colon, rather, to New York, engaged in competition for transcontinental business?
A. Yes; they were a factor in the traffic.
Mr. LOVETT. I did not hear that answer.
WITNESS. I said that steamship line was a factor in the traffic.
Q. Prior to 1901 was there emigrant passenger business for the Pacific Ocean and intermediate regions that was competitive between the different lines?
A. You mean from here?
Q. Yes.
A. Yes, sir.
Q. Was that quite a considerable business?
A. Quite a large business.
Q. And what lines participated in that—all the lines?
A. All the western lines.
Q. The same ones that you have mentioned as having competed for freight business?
A. Yes.
Q. How was it as to first-class passenger business? In what way did the lines seek to get first-class passenger business? You
1380 stated that you were at one time general passenger agent.
A. By advertising and by the service they rendered.
Q. Did all the lines engage in that?
A. They all were doing more or less of it.
Q. All the transcontinental lines that you have mentioned?
A. Yes, sir.
Q. How did the rates over the various lines for California from here, compare?
A. They were identical.
Q. Identical.

A. I think the rates were all published in one tariff.

Q. That is right.

A. A joint tariff.

Q. Then, there was no competition in rates, but the competition was in service and in attracting people's attention to the various lines, was it?

A. That is right.

Q. Now, take all this business together, from the East, both the freight business and the passenger business concerning which you have testified: was the business that was competitive between the Southern Pacific, meaning the Sunset Route of the Southern Pacific, either by rail connections to New Orleans or Texas points, thence to the Coast, or by the boat lines to New Orleans and thence to the Coast—that is, competitive between that line and the Union Pacific line—a large business or a small business?

A. It was a large business, and the competition was chiefly east of Ogden.

Q. Yes, that is right.

A. I always considered in our California business, in our Pacific Coast business, that the connections of the Union Pacific or the Southern Pacific were more difficult to deal with as competitors than those lines proper.

1381 Q. Yes, because you had a line clear through to Chicago.

A. We had a line from Chicago to San Francisco and from Chicago to San Diego. And our difficulties were with the competitors of the Southern Pacific more than with the Southern itself.

Mr. LOVETT. The connections?

WITNESS. I mean the connections.

Q. Yes, I understand; the connections of the Southern Pacific rather than the Southern Pacific, and one of those connections was the Union Pacific?

A. And one of those connections was the Union Pacific.

Q. And that competition was very strenuous, wasn't it?

A. The Union Pacific had the D. & R. G. to compete with—its nearest competitor; then it had on the South the Texas Pacific and the Rock Island from El Paso; and when it got as far as Denver it had the Burlington and the Missouri Pacific.

Q. And the Union Pacific was all the time fighting for this through business as against you and as against the Sunset line of the Southern Pacific?

A. The Union Pacific was doing just like the rest of us were—each of us trying to do the very best we could under the circumstances.

Q. And that was a very large traffic?

A. That was a large traffic.

Q. Mr. Morton, what territory is embraced within the expression "New York common points?"

A. I think that the technical definition of New York common points means the points which take the New York rate, that is, 100 per cent of the New York rate.

1382 Q. Do you know what territory that embraces?

A. No, I could not tell you just exactly, but it is quite a large territory.

Q. It embraces all New England, doesn't it?

A. I think in some respects; on some things it does not embrace all New England. I think for instance the grain rate to New York is lower than it is to Boston.

Q. I am speaking of westbound business now.

A. I could not tell you about that; I don't know.

Q. You don't know?

A. No.

Q. Well, I can prove that by somebody else.

A. Some of the men who understand the details better than I, could tell you about that.

Cross-examination by Mr. LOVETT:

Q. Mr. Morton, when did your connection with the Atchison commence?

A. The first of January, 1896.

Q. What position did you first hold with the Company?

A. Vice-president in charge of traffic.

Q. What was the western terminus of the Atchison at that time?

A. San Diego.

Q. When did it get the line to Mojave?

A. I think it was in 1897, '98 or '99; I can't remember just which year it was; but it was the latter part, I think, of 1898.

Q. And there it interchanged business with the Southern Pacific?

A. Well, we interchanged business with the Southern Pacific before that.

Q. Where?

A. At Mojave. And when we bought the San Francisco
1383 & San Joaquin Valley Railroad we made a trackage arrangement to run from Mojave to Bakersfield, and used that track as a sort of a bridge on which to reach our line.

Q. That is, the track between Mojave and Bakersfield?

A. Yes.

Q. When did you acquire the line to San Francisco, that is, the San Francisco & San Joaquin Valley Railroad?

A. As I remember, it was about 1898.

Q. Where did the railroad of the San Francisco & San Joaquin Valley Railroad lie when you acquired it, between what points?

A. It was finished from Stockton to Bakersfield, and we completed it from Stockton into Point Richmond, which is on San Francisco Bay, opposite San Francisco.

Q. When was that line to Point Richmond opened for transportation?

A. Soon afterward. I think we opened about the first of May, 1899; but that is my recollection, and I cannot tell you exactly.

Q. Prior to that time you had no method of doing business to San Francisco except in connection with the Southern Pacific, had you?

A. That is the only way we did business there.

Q. What line was the Southern Pacific operating when your connection with the Atchison commenced?

A. It was the Southern Pacific.

Q. I say what line was the Southern Pacific operating at that time?

A. What line did it operate?

Q. What lines, yes.

A. It operated the Central Pacific as far east as Ogden, and the Southern Pacific, or Sunset Route, as they call it, as far east as New Orleans.

1384 Q. And the boat-line from New Orleans to New York?

A. And the Morgan Line of steamers.

Q. Was there any other line operating?

A. Yes, they had a line to Portland.

Q. Was there any company operating a line on the Pacific Coast at that time besides the Atchison and the Southern Pacific?

A. None.

Q. Mr. SEVERANCE. Well, you don't mean on the Pacific Coast; you mean in California?

WITNESS. Yes, I mean in California.

Q. I mean on the Pacific Coast south of Portland.

A. No. There was no other.

Q. As long as your connection with the Atchison continued, was there any other line operated to the Pacific Coast south of Portland except the lines operated by the Southern Pacific and the Atchison?

A. No other line that was engaged in through traffic. There were some small local lines there.

Q. The only competition for traffic to the Pacific Coast south of Portland was between the Southern Pacific and the Atchison and their connections, wasn't it?

A. Yes, that is right.

Q. Didn't that same condition exist as long as you were with the Atchison?

A. Yes, sir.

Q. Mr. Severance asked you about the transcontinental lines. What lines do you understand he meant by that? lines connecting with the Southern Pacific and Atchison, as well as those lines?

A. When he asked me what transcontinental lines there were, I supposed he meant such lines as I named—the Canadian Pacific, the Great Northern, the Northern Pacific, the Union Pacific,

1385 the Southern Pacific and the Atchison.

Q. In the competition between the Sunset Route of the Southern Pacific (and by that I mean the route via New Orleans and El Paso) and the Union Pacific, that you testified about, do you not include among the lines engaging in that competition the lines east of the Missouri River?

A. Only as connections.

Q. Only as connections?

A. Yes. They are all engaged in transcontinental traffic.

Q. In answer to questions by Mr. Severance you stated, in substance, that the traffic in competition between the Union Pacific and the Southern Pacific was large. Didn't you mean the competition between the lines formed by the Union Pacific from Omaha to Ogden, and the Southern Pacific from Ogden to San Francisco and other California points?

A. I said the traffic competed for was large. I do not think I said the competition was large.

Q. No; I understood you to say the competition.

A. I said the competition was chiefly east of Ogden and El Paso, and it was much more intense between the connections of the Southern Pacific than it was with the Southern Pacific, so far as my experience was concerned—the Atchison's experience.

Q. It is true, is it not, Mr. Morton, that the Union Pacific extends only from Omaha to Ogden?

A. Omaha to Ogden.

Q. What is that distance, approximately?

A. 1,032 miles, as I remember it.

Q. And the Central Pacific, to which you referred, is the line extending from Ogden to San Francisco?

A. To California.

1386 Q. The various branches. And about what is the distance from Ogden to San Francisco?

A. Something over 800 miles.

Q. The Central Pacific, to which you referred by that name, was operated by the Southern Pacific Company during the whole time?

A. Yes.

Q. Isn't it true, Mr. Morton, that it would be impossible for the Union Pacific to compete for any California business except in connection with the Southern Pacific from Ogden to San Francisco, leaving out of consideration for a moment any possible line by way of Portland?

A. I think it would be impossible for them to do so with any success.

Q. Well, the competition that the Atchison had to meet, outside of the competition of the Sunset Line by way of New Orleans, was the competition of the all-rail line, was it not?

A. Yes, sir.

Q. Of which the Southern Pacific line from Ogden to San Francisco was part? That is true, is it not?

A. That is right.

Q. No rate could be made lawful by any line, except the Atchison, to San Francisco, without the consent of the Southern Pacific Company?

Mr. SEVERANCE. You mean all-rail rates?

Mr. LOVETT. I mean rail rates.

A. No; the rates actually were in the hands of the Southern Pacific Railroad.

Q. It always controlled the rates to California except as against the Atchison, did it not, Mr. Morton?

A. Yes, sir.

Q. And that was because it owned the line from Ogden or
1387 operated the line from Ogden to California points, and the Sunset Route being the only line outside of the Atchison?

A. They controlled the situation. They had the matter in their own hands.

Q. Isn't it true, Mr. Morton, with respect to business to and from the Pacific Coast and the Orient, the Union Pacific was absolutely without any rate-making power unless it be by way of Portland?

A. Yes, sir.

Q. It is merely a link of about a thousand miles in the all-rail line, is it not?

A. That is right.

Q. Isn't it true, Mr. Morton, that the competition about which you testified, in answer to a question by Mr. Severance, was competition between the Sunset Route of the Southern Pacific (that is, by way of New Orleans and El Paso), and the all-rail lines extending from the Atlantic seaboard and the Middle West to San Francisco, of which the Southern Pacific was a part by reason of its control of the line from Ogden to San Francisco?

A. Well, the competition, I have always considered, was east of El Paso and Ogden, and, you might say, Albuquerque on the Atchison. We always tried to maintain certain well-defined arbitraries west of there, and it was connections of the Southern Pacific at those points that competed with us.

Q. Isn't this the situation so far as the Southern Pacific was concerned: that it operated one line from California to the East by way of El Paso and New Orleans and the Morgan Steamship Line to New York, commonly known as the Sunset Route, and that it also operated another line at the same time from San Francisco and
1388 other California points to Ogden, Utah, where it connected with certain lines extending thence eastwardly, and if there was any competition it was between those two routes (I mean leaving out of view the Atchison): that is, the Sunset Route and the route made by the Southern Pacific to Ogden, and thence the lines eastwardly: that is true, isn't it?

A. I think it is.

Q. So that there never was a time, so long as you were connected with the Atchison, when a railroad rate could be made to or from California by the Union Pacific or any other railroad company, except the Atchison, without the consent of the Southern Pacific?

A. That is right. Any other published rate.

Q. That is what I mean—an open, lawful rate. That the concurrence of the Southern Pacific——

A. Was essential.

Q. ——was essential in any lawful rate that was made during that whole time, except by the Atchison?

A. Yes, sir.

Q. When the Burlington took traffic through Denver, as you testified in answer to questions by Mr. Severance, and turned that traffic over to the Denver & Rio Grande, the latter could not get to the Pacific Coast except by delivering it to the Southern Pacific at Ogden? That is true, isn't it?

A. That is true.

Q. So, with the Missouri Pacific or any other line?

A. That is true.

Q. And the traffic which you said was large in volume and was competed for by the Southern Pacific and the Union Pacific was the traffic that would move by way of Ogden and over the line of
1389 which the Southern Pacific was a part, on the one hand, and the Sunset Route of the Southern Pacific on the other?

A. That is true.

Q. And the concurrence of the Southern Pacific in the rates on which that traffic would move, at a lawful rate, was necessary?

A. Absolutely.

Q. Do you know to what extent the Union Pacific and the Oregon Short Line and the Oregon Railroad & Navigation Company attempted to carry business from the East to San Francisco by way of Portland?

A. I don't think they ever made very much of an attempt to do it.

Q. Isn't it true, Mr. Morton, that you, as vice-president in charge of traffic on the Atchison, never regarded that as a practical route?

A. It never bothered us any on the Atchison.

Q. If they should get traffic to San Francisco that way, they could not get it into the interior of California either by using the Southern Pacific or Atchison, could they?

A. That is true.

Q. That never was a serious factor in the rate situation to the Pacific Coast?

A. It never was an important factor.

Q. During what period was it that the Canadian Pacific attempted to move traffic to San Francisco by its rail lines to the Pacific coast and by boats, to which you referred?

A. That was in the latter part of the last century—in the later 90's.

Mr. Milburn. That was a long time ago.

Mr. Severance. In Revolutionary times.

Q. Isn't it true, Mr. Morton, or didn't you understand that
1390 the Canadian Pacific by that manoeuvre was trying to force recognition of its position as a differential line?

A. It was.

Q. And I suppose that it would be possible for any line to move traffic under a sufficient differential?

A. Well, they thought it was very necessary that they should have a differential, and it created a good deal of confusion and agitation, and resulted in an agreement on my part to arbitrate as to whether there should be a differential or not, and, if so, what the differential should be.

Q. Was there an arbitration?

A. There was an arbitration.

Q. And what was the result of it?

A. The arbitrators decided that there should be no differential, which resulted in the Canadian Pacific going substantially out of the business.

Q. When the differential was refused, then they withdrew?

A. They practically withdrew. They still do a little business now and then, but nothing to speak of. I think their chief business is confined to hauling ammunition for the United States Government and supplies for the navy-yard.

Q. What is your opinion? Do you think the business resulting to the Canadian Pacific by that effort was profitable to them or otherwise?

A. I do not think there was any profit in it.

Q. Mr. Severance asked you whether the rates via these various routes, that is, the all-rail routes, and the Southern Pacific were the same?

A. I said the published rates were the same, and generally on the same tariff.

Q. Isn't it absolutely necessary, Mr. Morton, if the rate is lawful, that generally the rates should be the same by all practical routes?

A. They generally are the same.

1391 Q. That is the general rule, isn't it?

A. No rates were ever published to the Pacific Coast without first receiving the sanction of the Southern Pacific and the Atchison since the Atchison has been a through line. They are generally regarded as the rate-making power so far as that territory is concerned.

Q. Do you understand that that is so to-day?

A. I understand that that is so today, yes, sir.

Q. Has there been any change in that situation out there since 1901, as far as you know, with reference to the way the business is handled?

A. I don't know of any. When I say that the Atchison and the Southern Pacific are always regarded as the rate-making power so far as California rates are concerned, of course I take into consideration the fact that the rates to the Pacific Coast are generally the same and that the rates made by the northern routes, the northern transcontinental lines, the Canadian Pacific, the Great Northern, the Northern Pacific and the Oregon Railroad & Navigation Company, are taken into consideration of course.

Q. What was the result of the effort of the Northern Pacific to engage in the California business that I think you referred to in answer to questions by Mr. Severance?

A. It was an effort that I knew very little about, and it never amounted to very much.

Q. It never was a serious factor?

A. Never.

Q. The lines east of the Missouri River were soliciting business, transcontinental business, during your connection
1392 with the Atchison?

A. Yes, sir.

Q. Both in the eastern territory and on the Pacific Coast?

A. Yes, sir.

Q. And the Union Pacific, the Denver & Rio Grande, the Burlington, and even the trunk lines between Chicago and the Atlantic seaboard were soliciting that business, weren't they?

A. Yes, sir, all the lines between Chicago and the Missouri River, the Wabash, the Missouri Pacific, the Rock Island, the Illinois Central, the North-Western, the St. Paul; they were the connections.

Q. They were the connections that you said you always found the most difficult factor?

A. Yes, sir.

Q. Now, suppose in traffic meetings or in controversies over divisions of through rates the Southern Pacific and Union Pacific were represented by separate persons. They might be connecting lines and still have differences among themselves as to the division, might they not?

A. They might have.

Q. And it does not necessarily follow when there are such differences that they are competing lines, does it?

A. Not necessarily.

Q. It means that they are connecting lines?

A. It might mean either.

Q. These divisions about which you testified, were by agreement of the various lines engaging in the traffic, were they not?

A. Yes, sir.

Q. Division of the through rate.

A. Divisions are always reached by agreement. It is a matter of negotiation.

Q. And where lines interchange business, even connecting
1393 lines, there must be such divisions and sometimes differences with respect to the amount that each shall receive?

A. Yes, sir.

Q. With reference to the business to points in Colorado, about which you testified that some of it was handled by way of New Orleans, the Southern Pacific to New Orleans and the rail lines out, if that business moved to New Orleans it would go to Colorado, then via what lines?

A. I assumed that it might have gone via Southern Pacific out as far as Houston, some line there; but I do not think there was much of it moved that way. I think it went Texas-Pacific, although that business has all been transferred now to Galveston. I don't think much of it goes from New Orleans.

Q. Was the Texas & Pacific the short line to Colorado points?

A. Yes, shorter than the Southern Pacific, I think.

Q. Do you remember when the Southern Pacific steamships first went to Galveston, that is, the Morgan line?

A. It was while I was with the Atchison road; along about 1900, I think.

Q. Wasn't it after 1901?

A. I couldn't tell you.

Q. If this Colorado business was carried to New Orleans, then the natural line for it to move over would be the Texas & Pacific to Fort Worth, and thence up the Fort Worth & Denver to Colorado points, or it might be turned over by the Texas & Pacific to some other line?

A. Yes, I think the M. K. & T. handled some of it. I know
1394 the Rock Island handled some of it. I know they were all factors in the settlement of the matter.

Q. And if it was carried by the Southern Pacific line or the Southern Pacific system——

A. I don't think the Southern Pacific ever had much to do with it.

Q. Now, moving from Galveston, if it moved through that way, it could be handled either by the Gulf, Colorado & Santa Fe from Galveston or the Missouri, Kansas & Texas or the International Great Northern and their connections, or the Houston & Texas Central controlled by the Southern Pacific Company?

A. Yes, sir, by the Mallory or Morgan line of steamers from here to Galveston, and thence by four or five different roads.

Q. The Southern Pacific Company has never controlled any line into Colorado, as far as you know, has it?

A. Not that I know of.

Q. Isn't it true that the line that it controls from the Gulf does not extend north of Denison, Texas, or Fort Worth, Texas?

A. The Houston & Texas Central?

Q. Yes.

A. That is true.

Q. And it could not reach Colorado points as a connecting line?

A. Yes.

Q. It has no line of its own, then?

A. It has no line of its own.

Q. Now that business from New Orleans or Galveston to Colorado points might move very naturally to Kansas City, might it not, and then over the Union Pacific?

A. For Colorado?

Q. Yes.

A. That would be taking it out of the way.

Q. From New Orleans?

A. Well, not from New Orleans, no; from Galveston. Yes,
1395 it could move that way. It could move from New Orleans to Kansas City, and thence via the Union Pacific.

Q. You don't know whether it moved that way or not?

A. I could not tell whether any moved that way or not.

Q. The Missouri, Kansas & Texas could move it to connections with the Union Pacific at Kansas City, west of Kansas City, both places?

A. Yes, they could take it away west of Kansas City. The M. K. & T. has no line to Colorado.

Q. No, but it connects with the Union at Kansas City and at Junction City, Kansas.

A. At Junction City, Kansas, yes.

Q. And there are other lines by which that could move to Kansas City and be interchanged with the Union Pacific there?

A. Yes, several.

Q. Union Pacific Railroad Company owns no line and has never owned any line east of the Missouri River, has it, as far as you know?

A. No.

Q. Do you see any reason why, from a traffic standpoint, that this freight at Kansas City would not be as acceptable to it as at Ogden?

Mr. SEVERANCE. You do not mean Ogden: you mean Omaha, don't you?

Mr. LOVETT. I mean Omaha. I am speaking of the freight to Colorado points.

A. I think they received the same compensation for hauling it from Kansas City as from Omaha.

Q. The Southern Pacific in carrying this Colorado business from the Atlantic seaboard to New Orleans might work it in connec-
1396 tion with the Union Pacific by way of Kansas City and the lines between New Orleans and Galveston, might it not——

A. It might.

Q. ——with equal results to the Union Pacific?

A. It might.

Redirect examination by Mr. SEVERANCE:

Q. Mr. Morton, you spoke of the Atchison and the Southern Pacific having the rate-making power for transcontinental business by reason of being the only lines that reached California. Now, it is immaterial, isn't it, when it comes to a question of competition between the Union Pacific or any of these other lines, and the Southern Pacific and the Atchison, what the rate is so long as the rate is the same over all lines? The full rate does not make any difference in the matter of competition when it is the same over all the lines, does it?

A. No, except that there is no competition in rates, that is all.

Q. Yes.

A. The competition is in service and in other things.

Q. That is it. And if the rates are the same, they have only one thing by which the Southern Pacific could trouble the Union Pacific, and that would be in the matter of the division of the through rate, wouldn't it?

A. I didn't quite get that, Mr. Severance.

Q. Judge Lovett brought out that the Southern Pacific and the Santa Fe had to be consulted as to what the full through rate should be to California, because they are the lines that reached California. Now, it is immaterial to the Union Pacific in competing against the Sunset Route, we will say, what the rate is, so long as they
1397 are the same over both lines, isn't it? They are on equal terms for competition?

A. Yes.

Q. That is true?

A. Yes, sir.

Q. Now, if the Canadian Pacific was able to transport traffic away up around through Canada to Vancouver, and then down to San Francisco, for an excessive period of several years, as you have stated, wouldn't it be possible for the Union Pacific to protect itself against a demand for a division on the part of the Southern Pacific by putting a boat-line on from Portland?

A. It would be possible to do it. It would be just a question of judgment as to what they would make and what they would lose by it.

Q. Certainly. But they reach the coast at Portland, don't they? They reach tidewater at Portland?

A. Yes, they reach tidewater.

Q. And they could transport traffic from the east to Portland, and then down to San Francisco by boat, cheaper than the Canadian Pacific could take it up through Canada to Vancouver and down, couldn't they?

A. I should think so, yes, sir.

Q. And they actually have done it?

(No answer.)

Q. The Union Pacific have, haven't they, to some extent?

A. I don't know about that. I know the Canadian Pacific did it.

Q. And you say the question of whether they should have a differential was referred to arbitration?

A. Yes.

Q. Who were the arbitrators?

A. I think Mr. E. S. Washburn was one of them and J. W. Midgley was the other. I think they were to call in a third if they could not agree, but they agreed.

1398 Q. Do you know how long ago that was?

A. That was ten years ago, I should say, pretty near.

Q. That was in the "last century" too?

A. That was in the last century too. I am not quite sure about that. I think there were three arbitrators, and Midgley disagreed with the others.

Mr. LOVETT. Mr. Day.

WITNESS. Yes, W. A. Day was one of the arbitrators. I had forgotten that.

Q. Did Mr. Stubbs make an eloquent argument on that?

A. Mr. Stubbs always makes an eloquent argument.

Q. Now, Mr. Morton, you testified a moment ago, in answer to Judge Lovett, I believe, speaking of this Colorado common points business, that the Southern Pacific did not have much to do with it. You were referring in that connection to the Southern Pacific railline from New Orleans? You did not mean to exclude the boat-line?

A. The Morgan Line of steamers had a good deal to do with it, but they had to take care of the Mallory Line, their competitors in the matter,—both steamship lines running to the Gulf of Mexico from here.

Q. So that the Southern Pacific boat-line was a factor in the matter?

A. Yes, the Morgan Line of steamers was a factor.

Q. Yes, the Morgan Line of steamers is what I mean. Now speaking of these traffic meetings: do you remember years ago, before the Interstate Commerce law, when there was a pool on transcontinental business?

A. I have an indistinct recollection of something of that kind.

Q. Were both the Union Pacific and the Southern Pacific
1399 interested in that pool?

A. Yes.

Q. And don't you remember competition in the meetings over the amount that should be allotted to each one in that pool, between those lines?

A. There was always a general scramble, when there was a pool, to see who would get the most of it.

Q. And the Union Pacific was scrambling on one side, and the Southern on the other?

A. Yes, but as connections.

Q. Yes; not only as connections, but the Sunset Route participated in that pool, didn't it?

A. It depended upon the kind of a pool it was. If it was a pool where they had to pay out money, each of them was trying to get out of their payment; and if it was where money was coming in, they were each trying to get the most of it.

Q. That is right. Now the Northern Pacific, and the Union Pacific, with its line to Portland, and the Union Pacific to Ogden, and the Sunset Route were all parties to that and all scrambling for all they could get out of it; isn't that so?

A. Yes, sir.

Q. And that included all the competing lines?

A. That is right.

Q. Now, in the traffic meetings that have been held since the days when the pool went out of business existence, when questions of policy were up for consideration, or questions of rates, were not

the Union Pacific and the Sunset Route competing with each other oftentimes?

A. Frequently.

Q. Very frequently?

A. Frequently, yes.

Q. And through their soliciting and commercial agencies, the Sunset Route, on the one hand, and the Union Pacific, on
1400 the other, were actively competing with each other, were they not, prior to 1901?

A. I think they were. I think they are now, here.

Q. You think they are now, here in New York?

A. Yes.

Q. And at Chicago, you say, the agency was consolidated?

A. I understand so.

Q. And competition ceased, didn't it?

A. Sir?

Q. And the competition ceased between those lines except as their connections——

A. Well, there never was much competition at Chicago, that I know of.

Q. It was mostly east of Chicago?

A. It was down here, mostly.

Q. And Pittsburg district?

A. And Pittsburg district, to some extent.

Q. And also through Indiana and the Cincinnati territory?

A. Through what they call the Central States territory there was competition.

Q. There was competition?

A. Yes.

Q. Between the Union and the Southern Pacific and all the lines?

A. Well, it was, as I said before, largely the connections of the Union and Southern Pacific. The Southern Pacific from New Orleans was anxious for the business, and so were the connections of the Union Pacific east of Ogden.

Q. Well, wasn't the Union Pacific anxious for the business from Omaha to Ogden?

A. Yes, sir.

Q. And didn't it have its agents in the field trying to get it?

A. They did.

Q. And used every means they could to get it?

A. That is right.

1401 Q. As against the Sunset Route by New Orleans?

A. As against everybody else.

Q. Including the Sunset Route by New Orleans?

A. Including the Sunset Route.

Q. Now, rates have been changed from time to time on transcontinental business, haven't they?

A. Yes, sir.

Q. They have been raised at times and lowered at times?

A. Yes, sir.

Q. Was that ever done without the consent of the Union Pacific, or its assent, or consultation with them?

A. I think so.

Q. Without their consent?

A. I think so.

Q. By whom?

A. The Southern Pacific and Atchison.

Q. The Southern Pacific and Atchison?

A. Yes.

Q. Without the consent of the Union Pacific?

A. I think so.

Q. Do you remember any instances of that kind?

A. I do not think that the Union Pacific was much of a factor in making rates to and from San Francisco or California.

Q. Making the full through rate?

A. No. I think they were entirely, as were all the other connections of the Southern Pacific, dominated by the wishes of that corporation.

Q. As to what the through rate should be?

A. Yes, as to what the through rate should be. The Southern Pacific officials were on the ground. They were in intimate, close relationship to the receivers and shippers of goods, and they had a bigger interest in California than anybody else, and naturally the other railroads bowed to and favored them in regard to what should be done out there.

1402 Q. That is eastbound business you speak of, isn't it?

A. That is as to both.

Q. That is, the consignees?

A. The receivers and the shippers.

Q. They were in touch with the consignees?

A. Yes, sir.

Q. Now, you have stated, I believe, on your direct examination, so far as the divisions are concerned, that they have remained substantially the same for thirty years?

A. I think they have. There may have been some few modifications, but substantially they are the old divisions put in at the time the Union Pacific and the Southern Pacific were completed.

Q. Were what?

A. Were completed. That is away back.

Q. They have been substantially the same since then?

A. Substantially.

Q. Do you remember of any transcontinental traffic meetings at which the Union Pacific was not represented?

A. Where the Union Pacific was not represented?

Q. Yes.

A. Well, I know of rates that have been made on transcontinental traffic where the Union Pacific——

Q. Well, you have made rates yourself, haven't you, without consulting anybody?

A. No, never.

Q. Never did?

A. No; we always conferred.

Q. Do you remember any transcontinental meeting in which they were not represented, or accounted for in some way if they could not be there?

A. We have never published rates that have not been by agreement of all other railroads or by understanding after discussion.

1403 I do not mean to say that rates have not been privately or secretly made at times without the knowledge of other railroads, because they have been.

Q. And that was a method of securing business in the old days?

A. That was participated in by all the railroads doing business.

Q. Yes. And that was done by railroads even where they had connections, where they would give up a part of their own division, part of the full rate?

A. Yes, and that was done by connections, without expecting the roads controlling the situation to give up anything.

Q. And in that kind of competition it was possible for the Sunset Route to compete against the Union Pacific without the Southern Pacific figuring with the Union?

A. Well, the Sunset Route occupied the same relations to all of the connections of the Ogden Line, the Central Pacific Line, that the Atchison did to the lines running west from Chicago. They had a line of their own through to New York. The Atchison had a line of its own through to Chicago, and with perfect good faith on the part of the Southern Pacific the connections east of Ogden might vary the rates, and the connections east of Ogden, including the connections east of Chicago, might vary the rates so far as the Sunset Line was concerned. To some extent it was a disadvantage to have a through line and not have wicked partners.

Q. Yes, that is right. And the Union Pacific could vary its proportion of the through rate in order to get the business? That is what I mean.

A. I mean not particularly the Union Pacific. I mean all of them.

1404 Q. Not particularly, but that is one of them that could.

A. I mean all of them could.

Q. Well, the Union could do it?

A. They could. They might have done it.

Mr. KELLOGG. It was an important factor in the competition.

WITNESS. That competition was illegitimate; not——

Mr. KELLOGG. I mean since.

Mr. LOVETT. Let him answer the question.

WITNESS. That competition was really contrary to law.

Q. That was in the old days?

A. That was in the old days when they were all doing something to get business in a manner which was not permitted by legal methods.

Recross-examination by Mr. LOVETT:

Q. Isn't it true, Mr. Morton, that the competition which you have just mentioned, that is, what the Union Pacific or these eastern lines might do without the consent of the Southern Pacific, would be in violation of the law?

A. Yes, sir.

Mr. KELLOGG. He is referring to cutting rates; that is what you mean—rate-cutting?

WITNESS. Yes.

Q. As I understood, you testified—and correctly, as I understood—that no rate could be made to or from the territory east of the Missouri River or east of Ogden to California, except by the Atchison, without the consent of the Southern Pacific. I mean no lawful rate could be made.

A. That is right.

Q. And, consequently, any departure from that rate by way of rebate, or otherwise, by any of the connections of the Southern
1405 Pacific without the consent of the Southern Pacific, would be in violation of the published rates, in violation of law, wouldn't it?

A. That is true.

Q. The scramble between the Union Pacific and other rail lines for the business about which you testified, except that which went to the Atchison, was all grist for the mill of the Southern Pacific at last, wasn't it?

A. Yes, it all helped the Southern Pacific.

Q. And that was the competition between its connections?

A. Yes, sir.

Q. For the business east of Ogden?

A. Yes, sir.

Q. Now, in those pooling arrangements to which Mr. Severance referred, there was, I suppose, a division of the traffic or of the revenue of the pool, and the contention between the different parties was as to the share that each should have in the total revenue, and that contention might arise between connecting as well as competing lines, might it not?

A. Yes, sir.

Q. Then, the Southern Pacific, owning its own line from New York by way of New Orleans and El Paso to California points, and only a portion of the all-rail line, would naturally favor, under ordinary conditions, the route by which it could get the entire revenue, would it not, as against the route where it would get only a portion?

A. Naturally.

Q. Any contention that the Union Pacific might have made in the traffic associations for a share of that traffic as against the Southern

Pacific would not be as against the Sunset Route, but in con-
1406 nection with the route from Ogden to San Francisco, which was its only outlet to the Pacific; is that true?

A. That is true.

Q. Mr. Severance asked you as to the value of the route by way of Portland and the boat line down to San Francisco, by the Union Pacific, as a club or a means of forcing a larger division with the Southern Pacific. Now, Mr. Morton, if the Union Pacific had at any time attempted or should at any time attempt to use that sort of a club, or that as a measure against the Southern Pacific, to increase its share of the division on traffic interchanged at Ogden, don't you think that the opportunity for the Southern Pacific to retaliate by diverting its traffic to other lines as against the Union Pacific, would be a very much greater club or measure against the Union Pacific than the Union Pacific would have against it?

A. I think so, yes, sir.

Q. Don't you think as a traffic manager that it would be a suicidal proposition for the Union Pacific to attempt to use that as against the Southern Pacific in that way?

A. I think the Union Pacific thought so. The Atchison could have formed a line to San Francisco by San Diego and water if they wanted to, but they never saw fit to do it. That was before they had a line into San Francisco. They did not think there was anything in it.

Q. The vast volume of traffic of the Union Pacific to or from the Pacific Coast always has been and must necessarily be interchanged with the Southern Pacific at Ogden rather than by way of Portland; isn't that true.

A. Yes, that is true. A very large proportion of the east-
1407 bound business in California consists of the products of the state, say oranges. They could not be sent that way.

Q. Now, the Union Pacific has no other way of getting to the Pacific Coast except by way of Portland, whereas the Southern Pacific had many ways by which it could move its traffic to or from the Pacific Coast without using the Union Pacific? That is true, isn't it?

A. That is true.

Q. You were asked something by Mr. Severance with reference to competition in way of service. How does the service afforded by the line of the Union Pacific and the Southern Pacific from the Missouri River, that is, from Council Bluffs and Omaha by way of Ogden to the Pacific Coast, compare with what it was before the Union Pacific purchased the stock of the Southern Pacific, in 1901? Hasn't it been vastly improved?

A. The service by El Paso, you mean?

Q. No, I mean the service afforded by the line made up by the Union Pacific from Council Bluffs to Ogden.

A. I think it is better than it ever was. I think the service also on account of the Rock Island by El Paso is better than it ever was.

Q. The service in these lines has been very much improved since 1901, hasn't it?

A. Very much.

Mr. SEVERANCE. The Santa Fe has too, hasn't it?

WITNESS. The Santa Fe has too.

Mr. KELLOGG. All the lines have, haven't they?

WITNESS. Well, not all of them, but those two lines particularly have been.

Mr. KELLOGG. The Southern Pacific have been, haven't they?

1408 WITNESS. The Southern Pacific have been, yes. I was speaking of the Union Pacific and the Central Pacific and the Southern Pacific also.

Mr. KELLOGG. Hasn't the Northern——

Mr. LOVETT. I beg your pardon, Mr. Kellogg, but I had not finished.

Q. The point I am trying to make is, that since 1901, the spring of 1901, when the Union Pacific acquired a large interest in the stock of the Southern Pacific, that the transportation line made up of the line of the Union Pacific in connection with the line of the Southern Pacific from Ogden to the Pacific Coast has been very much improved?

A. They have.

Q. Large expenditures have been made on those lines?

A. Yes.

By Mr. SEVERANCE:

Q. Just one question about this matter of service. Haven't the rates to the Pacific Coast been much affected by the clipper ships around the Horn, around through the Straits of Magellan?

A. At times.

Q. And also by the Panama route?

A. The rates have been more or less affected, yes.

Q. And the Tehuantepec route?

A. Well, that has been since my railroad experience.

Q. So that there are a great many factors outside of the wishes of the Santa Fe and the Southern Pacific that figure in the making of a rate to the Coast?

A. When I testified in regard to the rate-making, I referred only to overland railroads. One reason that the matter was left to

1409 the Atchison and the Southern Pacific officials who were on the ground was that they kept in touch with all the competition from everywhere and knew what was going on out there.

Q. Now, the matter of service has been touched on here. If the Union Pacific was entirely disconnected from the Southern Pacific in ownership, it would have absolute control over the quickness of its service from Ogden to Omaha, wouldn't it, the same as any other line of railroad?

A. Yes.

Q. Over a thousand miles of that distance it is in competition with all other lines in the way of service?

A. Yes, sir. It might not have the same interest in improving its line if it did not have that connection, of the business that came and went to that connection.

Q. Well, it always had that connection.

A. It always had that connection.

Q. Judge Lovett asked you if it would not be a suicidal matter for the Union Pacific to endeavor to work business by way of Portland. It would likewise be a suicidal matter for the Southern Pacific to make such extreme demands in the way of divisions as to force traffic in other directions, wouldn't it?

A. I think their interests are mutual, are identical.

Q. So if they made such extreme demands for the haul between Ogden and San Francisco that it left little revenue for the Union Pacific and the other lines to the East, it would have the effect of throwing business to the Santa Fe and other lines, wouldn't it?

A. I think it would.

Q. Consequently that might be suicidal for the Southern
1410 Pacific. They might assassinate their Ogden route?

A. That is true.

Mr. LOVETT:

Q. You do not understand that the public is interested in the matter of the division of rates between railroads, do you, Mr. Morton?

A. No, I do not think the public knows anything about it.

Q. Nor cares anything about it?

A. Unless they happen to be stockholders and are not getting the dividends they should.

Q. I mean the shippers are not interested in that question.

A. No.

(An adjournment was here taken until the morning of Wednesday, January 6, 1909, at 10.30 o'clock.)

1411 ROOM 508, CUSTOM HOUSE, NEW YORK CITY,
Wednesday, January 6, 1909—10.30 a. m.

The hearing was resumed before the Special Examiner, Hon. Sylvester G. Williams, at the above time and place.

Present on behalf of the complainant, Mr. Frank B. Kellogg, Mr. C. A. Severance, and Mr. G. E. Husted. On behalf of certain defendants, Mr. Lovett, Mr. Spooner, and Mr. Kelly.

EDWIN HAWLEY,

being duly sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Hawley, where do you live?

A. I live in New York.

Q. How long have you lived in New York?
A. About 42 years.
Q. What is your business?
A. I am in the railroad business.
Q. How long have you been in the railroad business?
A. For the same length of time that I have lived in New York.
Q. With what companies have you been connected?
A. Do you want me to name the companies?
Q. If you please, and the capacities in which you were employed or engaged.

1412 A. I was connected with the Chicago, Rock Island & Pacific, the Erie Railroad, the Ohio & Mississippi Railway, the Chicago, Milwaukee & St. Paul, the Chicago & North-Western, the Chicago, Burlington & Quincy, and the Southern Pacific.

Q. And at present and in recent years you have been connected with other lines, haven't you?
A. I am president of the Iowa Central and the Minneapolis & St. Louis.
Q. At the present time?
A. Yes, sir.
Q. When did you become connected with the Southern Pacific?
A. February, 1883.
Q. And immediately prior to that time what railroad business had you been engaged in?
A. I was known as the pool agent of the Milwaukee & St. Paul and the Rock Island and the Northwestern and the Burlington. The California Fast Freight Line was the trade mark.
Q. And over what rails did the business of the California Fast Freight Line pass?
A. From what points?
Q. Well, take it from New York. It went over any of the trunk lines, did it?
A. Over any of the trunk lines in connection with those lines I have just mentioned.
Q. That is, the trunk line from here to Chicago and the trunk lines you have mentioned from Chicago?
A. From Chicago to Council Bluffs and thence by the Union and Central Pacific.
Q. Now, you say you went with the Southern Pacific in 1883.
A. Yes, sir.
Q. In what capacity?
A. As general eastern agent.

1413 Q. And how long did you continue with the Southern Pacific in that capacity?
A. I was with them until February, 1902.
Q. From 1883 to 1902, about 19 years?
A. 19 years, yes.
Q. What were your duties as general eastern agent, Mr. Hawley?
A. I had charge of the traffic, both freight and passenger.

Q. Over what district or territory?

A. East of the Mississippi River.

Q. Clear through to the Atlantic seaboard?

A. Yes, sir.

Q. When was the Morgan Line of steamers established?

A. Shortly after I became connected with the company, as soon as Mr. Huntington acquired that property.

Q. And that was from the first, after Mr. Huntington acquired it, run in connection with the Southern Pacific Sunset Route?

A. Yes, sir.

Q. Did you have jurisdiction over the Morgan line boats as well as the railroad?

A. Yes, sir.

Q. I mean the traffic department.

A. Yes, sir.

Q. What lines of transcontinental railroads were there, say, in the year 1900, or up to the purchase of the Southern Pacific stock by the Union, which you recall, in the spring of 1901—what transcontinental lines were there competing for the through business to the Coast?

A. What do you term transcontinental lines?

Q. West of the Missouri River lines.

A. The Union, the Atchison, the Texas & Pacific and the Southern Pacific.

Q. And the northern lines?

A. The Northern Pacific and the Great Northern.

Q. And the Canadian Pacific?

A. And the Canadian Pacific, yes, sir.

1414 Q. Now, as to business originating in New York and New York common points, when you were general eastern agent of the Southern Pacific, how did you endeavor to move that business to the Coast?

A. Via New Orleans.

Q. And what districts, as near as you can recollect, were included in New York common points?

A. Took in all of the territory east of Buffalo and Pittsburg.

Q. And as to business originating at Pittsburg or Cincinnati and in that territory, how did you endeavor to work that business to the coast?

A. Via New Orleans in connection with all-rail lines.

Q. Did the Union Pacific maintain eastern agencies at that time?

A. Yes, sir.

Q. And were those agencies working in competition with you?

A. Naturally.

Q. Was that the same with the Santa Fe and the other lines?

A. Just the same.

Q. Did this competition for transcontinental business between the Union Pacific and the Southern Pacific extend as far north as Portland at times?

A. Well, yes; to a much lesser degree, however, than the California common points.

Q. By competition between the Southern Pacific and the Union I mean the Sunset Route of the Southern Pacific.

A. Yes.

Q. What classes of traffic did the Southern Pacific Sunset Route handle between here and Portland and other Oregon points?

A. Dry goods particularly; high-class freight.

Q. Was that in considerable quantities at times?

A. Not great, no.

1415 Q. Not great as compared with San Francisco?

A. Oh, no.

Q. I suppose you have no statistics to show how much of that traffic there was?

A. None in my possession.

Q. How is that?

A. There is none in my possession.

Q. What about east-bound traffic from that region?

A. That was taken care of by the San Francisco end of it—the Southern Pacific.

Q. What was the nature of the traffic that moved to New York and common points from Portland and common points?

A. Well, hops, I think, more particularly from that section.

Q. And they came both ways, didn't they, by the Union Pacific and by the Southern Pacific?

A. Oh, yes.

Q. How were the rates as between the all-rail lines and the Morgan line and Sunset Route to the Coast?

A. They were upon an equality.

Q. Was that so as to all commodities, or were there some exceptions to that?

A. Oh, there may have been exceptions, periodically, on certain commodities.

Q. The class rates were the same, were they not?

A. Yes, sir.

Q. Mr. Hawley, do you recall anything about a time when the Canadian Pacific had any differential and handled business for California?

A. Yes, they did to some extent.

Q. You remember that fact, do you?

A. Yes.

Q. Do you remember how it was wound up by arbitration?

A. Yes, there was an arbitration.

Q. Did you know at the time what the differential was?

A. I did at the time, but I don't recall it now.

1416 Q. Now, Mr. Hawley, at the time that you were agent for the Southern Pacific here at New York, were you working business into Colorado common points and Utah common points?

A. Yes, sir.

Q. And how did that traffic move?

A. Via the New Orleans gateway, the Morgan line.

Q. And from thence to Colorado by what route?

A. The Houston & Texas Central and the Colorado Southern and at stated periods in connection with the Rock Island.

Q. The Houston & Texas Central delivered to whom?

A. The Southern Pacific.

Q. How far did that run?

A. From Houston to Fort Worth.

Q. How did you reach Houston from New Orleans?

A. Over the Morgan's Louisiana and Texas Railroad and Steamship lines.

Q. Was that also a Southern Pacific line?

A. Yes, sir.

Q. Therefore, in competing for Colorado business and Utah business you used the Morgan line to New Orleans, and later to Galveston?

A. Well, to Algiers, which is opposite New Orleans.

Q. Then the Morgan's Louisiana and Texas line and the Houston & Texas Central?

A. Yes, sir.

Q. Both Southern Pacific lines as far as Fort Worth?

A. Yes.

Q. And then to Colorado and Utah by the lines leading to the Northwest?

A. Yes.

Q. What were Colorado common points? What did they include?

A. I can't enumerate them now, but Denver is of course the principal distributing point.

Q. Did Utah common points take the same rates as Colo-
1417 rado common points?

A. No.

Q. That was separate?

A. Yes.

Q. Was all of Colorado upon an equality with Denver?

A. No, sir.

Q. But you carried commodities into that region?

A. Yes.

Q. How did your rates there compare with the all-rail rates from the East?

A. They were lower.

Q. As to that business into Colorado, were you competing with the Union Pacific?

A. Certainly.

Q. How is that?

A. Surely.

Q. And in reaching Colorado the Union Pacific did not use any portion of the Southern Pacific lines?

A. Reaching Colorado?

Q. Yes. They ran over their own rails?

A. No; the Southern Pacific did not have any rails into Denver.

Q. Now as to Utah business, Utah common points; were you in competition with the Union Pacific as to them?

A. Yes.

Q. And they did not use the Southern Pacific rails to reach Utah points?

A. Well, at times they used the Union Pacific under a division of the rates.

Q. But I say the Union Pacific in reaching Utah common points did not have to use the Southern Pacific rails?

A. No.

Q. Did any of your traffic into Utah common points, that was brought around through Texas, move to Utah by the Denver and Rio Grande and the Rio Grande Western?

A. Oh, yes.

Q. Most of it, didn't it?

A. Yes, sir.

1418 Q. Where was your connection with the Rio Grande, or where was the most southerly connection that you made?

A. At Denver.

Q. Was the traffic from the East into Utah and Colorado common points of considerable volume?

A. Considerable; yes, sir.

Q. Did the competition that you have spoken of for that business exist up to the time you left the Southern Pacific service?

A. Yes, sir.

Q. What change, if any, was made in the traffic organization of the Southern Pacific in the east after the purchase of the stock of the Southern Pacific by the Union Pacific?

A. With respect to agencies?

Q. Yes, sir.

A. I think there was a pretty general consolidation of the agencies, with the exception of New York; that was not consolidated.

Q. Why was not that consolidated, if you know?

A. I think I had as much to do with that as anybody. I opposed it.

Q. You opposed the consolidation?

A. Yes.

Q. But outside of New York the agencies were consolidated?

A. Yes.

Q. From your knowledge, what was the effect of the consolidation of those agencies on the competition formerly existing between the two lines?

A. It eliminated it to a very great extent.

Q. What are the objects of maintaining the commercial agencies of transcontinental lines here in the east?

A. The principal object is to secure business, I suppose.

1419 Q. Assuming that rates are maintained, what methods are adopted in maintaining business?

A. Well, various methods.

Q. Can you give it in general? How do they go to work to get business?

A. The conditions are a little different to-day from what they were when I was acting in the traffic business. There was a pretty general scrap at that time, when I was in the swim.

Q. Well, it is usually by solicitation, is it not?

A. Personal solicitation, as well as by correspondence.

Q. Mr. Hawley, was there at the same time competition between these two systems on passenger business for the coast, either first-class or emigrant?

A. Yes, sir.

Q. Or both?

A. Both.

Q. Was that active?

A. Very much so.

Q. Was that passenger business of large volume?

A. Yes, it involved the entire passenger traffic to the coast.

Q. Now, Mr. Hawley, what percentage of the transcontinental business out of New York and common points did you succeed in securing for the Sunset Route, we will say up to the first of January, 1901, just before the purchase of the Southern Pacific stock?

A. Well, it varied.

Q. Between what percentages did it vary?

A. As I recall it, so far as the seaboard business was concerned it ran as high as 85 per cent and as low as 40, I think. I do not carry those figures in my mind now.

Q. But you did get up as high as 85 per cent?

A. I think we did at one time, yes, sir.

1420 Q. And you started that competition yourself back in 1883 when you put on the boats, did you?

A. Practically.

Q. What percentage of the business in the east here—not strictly New York business, but of all the business in the East that was under your jurisdiction—did you succeed in obtaining for the Sunset Route?

A. That is, the business originating in what is termed the seaboard territory?

Q. Yes.

A. Oh, I should imagine we carried at one time as high as 50 per cent of it, perhaps a greater per cent.

Q. What proportion of the business east of Chicago did you succeed in getting for the Sunset Route, either by steamer connection or by rail connection at New Orleans?

A. I could not tell you, sir.

Q. How far west of New York did the seaboard zone run; that is, how far west did you absorb the rates to the seaboard?

A. Points east of Buffalo or Pittsburg.

Q. As to all that business originating east of Buffalo and Pittsburg, you handled it at the same rate as New York, did you?

A. Yes, sir.

Q. And the Southern Pacific absorbed the charge to the coast?

A. That is right.

Q. Can you tell generally what that covered? Did that cover all of New England?

A. Yes.

Q. And how far south did it go?

A. I do not remember the lines now. I think Norfolk was the southerly point.

Q. It covered, then, the territory reaching from Norfolk on the south to the International boundary on the north?

A. Yes.

1421 Q. And east of Buffalo and Pittsburg?

A. That is right.

Q. Now, as to the territory beginning at Pittsburg and Buffalo and extending westerly, what territory was embraced in what is called Pittsburg common points?

A. Well, there are numerous points.

Q. How far west did it go, if you remember?

A. There were some few points just east of Pittsburg which took Pittsburg rates. We did not compete for that business via New York.

Q. But you did by way of New Orleans?

A. For iron and steel products, generally.

Q. Just how far west did that territory run, if you can remember?

A. West?

Q. Yes; what is called Pittsburg common points.

A. West of what?

Q. How far west of Pittsburg?

A. I am only speaking now of territory east of Pittsburg.

Q. Yes, I know, but I am asking you now of the territory west of Pittsburg.

A. Well, I don't know as to that. We did not compete for that business at all by way of New York.

Q. I understand; not by way of New York, but did you by way of New Orleans and the rail lines?

A. Yes.

Q. Did that business take the same rate via New Orleans to the coast as it did via Omaha?

A. Yes, there was a certain group of points that took Pittsburg rates both east and west of Pittsburg, and they were routed by all-rail either by Cincinnati or by Chicago.

Q. But the rates were the same?

A. Yes.

Q. Either by Omaha and the Union Pacific or by New

1422 Orleans and Texas points?

A. Yes.
Q. The same tariff covered it?
A. Yes.
Q. Now, there was Cincinnati and common points too?
A. Yes.
Q. Did all that territory take the same rates each way?
A. That was open to all routes.
Q. And was that also competed for?
A. Yes, sir.
Q. By the same lines?
A. Yes, sir.
Q. By the Union on the one hand and the Sunset on the other?
A. Yes.
Q. How far west did this competition extend between these lines—to the Mississippi River?
A. Yes, sir.
Q. How about the territory in Tennessee and Alabama, the southeastern territory?
A. That was competitive as well.
Q. In the same way?
A. Yes.
Q. Between the same lines, at the same rates?
A. Yes, sir.
Q. Was the Southern Pacific interest in that region under your charge?
A. Yes, I had charge of all business east of the Mississippi River.

Cross-examination by Mr. LOVETT:

Q. What constituted the Sunset Route, Mr. Hawley, during the time that you were connected with the Southern Pacific?
A. It took in the Morgan's Louisiana & Texas Steamship Company, the Louisiana Western, the Texas and New Orleans, Galveston, Harrisonburg and San Antonio. Do you want me to give the individual lines of the Southern Pacific?
Q. No, I do not care for the corporate names. I want the
1423 route described.
A. The Morgan Line and the Southern Pacific interests.
Q. It includes the Morgan line of steamships between New York and New Orleans, and the rail lines controlled by the Southern Pacific from New Orleans to San Francisco by way of El Paso?
A. That is right.
Q. And as far north as Portland, Oregon?
A. Yes, sir.
Q. With various branches?
A. Yes.
Q. Did the Southern Pacific have any other line or part of line extending from the Pacific coast easterly?
A. The Central Pacific, yes.
Q. The Central Pacific?

A. Yes.

Q. That extends from the Pacific Coast, San Francisco, to Ogden, Utah?

A. Yes.

Q. What lines did that connect with at Ogden?

A. The Union Pacific and the D. & R. G. and Western.

Q. The Union Pacific line extends between what points?

A. Ogden and Omaha.

Q. About what is the length of that line?

A. I think it is something like a thousand miles.

Mr. SEVERANCE. We will admit it is 1,003 miles.

Q. And the Southern Pacific line from San Francisco to Ogden is about 850?

A. Yes.

Q. This traffic that the Union Pacific secured, by solicitation in New York and elsewhere, for the Pacific coast, to what line did it deliver it?

A. The Central Pacific.

Q. The Central Pacific or Southern. The Southern Pacific was operating the Central Pacific, was it not?

A. Yes.

1424 Q. As a matter of fact, the Union Pacific had no other way of getting that traffic to the Pacific coast except over the Southern Pacific from Ogden, had it?

A. Well, that is the only way they worked.

Q. So, as a matter of fact, the business that the Union Pacific secured by this so-called competition with the Southern Pacific ultimately went to the Southern Pacific?

A. The California business, yes.

Q. The Union Pacific could not lawfully make a rate to or from California without the consent of the Southern Pacific, could it?

A. No, sir.

Q. Isn't it true that you endeavored to solicit the business from this territory under your jurisdiction and route it by way of the Sunset Route because the Southern Pacific would get more revenue out of it than it would if it went by way of Ogden?

A. Naturally.

Q. As a matter of fact, the real competitor of the Southern Pacific for California business was the Atchison, wasn't it?

A. One of the competitors.

Q. Were there any others? I am not speaking of the Sunset Route but of the Southern Pacific as a whole.

A. Until the Atchison acquired the control of the San Joaquin Valley road, of course, they did not compete very much for Northern California business, but they did for Southern California.

Q. But the Atchison and Southern Pacific were the only companies that had lines extending from the Pacific coast easterly as far as Ogden, Utah, and El Paso, Texas, weren't they?

A. Yes, sir.

1425 Q. I suppose it is true that the lines out of New York, trunk lines to Chicago and the Missouri River and the Mississippi River, were struggling for the business as against the Sunset Route of the Southern Pacific?

A. Yes.

Q. In order to give the carriage of it either to the Union Pacific or the Atchison?

A. They made an effort in that direction, yes, sir.

Q. They had to deliver that business either to the Atchison or Southern Pacific, I suppose?

A. Or the Texas & Pacific.

Q. What did the Texas & Pacific do with it when it got it?

A. The Texas & Pacific?

Q. Yes.

A. Well, they routed it in connection with the Missouri Pacific & Texas via El Paso.

Q. What did they do with it at El Paso?

A. Delivered it to the Southern Pacific.

Q. The fact is, then, that whoever got it, it had to be delivered ultimately to the Atchison or the Southern Pacific, because they were the only lines?

A. Yes, sir; they had to pay tribute to those two lines.

Q. Did the Union Pacific ever to any considerable extent work traffic for California points by way of Portland?

A. I think not.

Q. That is an impracticable route for California business, isn't it?

A. In point of time, yes.

Q. They could not distribute in California even if they got it by boat, could they?

A. No, sir, not without paying local rates.

1426 Q. And if the Union Pacific had ever attempted to work that line as against the Central Pacific, isn't it reasonably certain that the Southern Pacific would have retaliated by diverting its traffic at Ogden to the Denver & Rio Grande?

A. It would be quite natural for them to have done so.

Q. So the Union Pacific was never in a position to work the Portland Route for California business as against the Central Pacific without probably losing more than it would make by it?

A. I guess that is true.

Q. You testified, in answer to questions by counsel for the Government, that there was some traffic moved from the Atlantic seaboard and from the other territory under your jurisdiction to Portland, Oregon. That went by boat to New Orleans and thence to El Paso, Texas, and thence by way of Los Angeles and San Francisco to Portland?

A. Yes, sir.

Q. What was the length of that line compared with the all-rail line by the Union Pacific and Oregon Short Line?

A. I should think it was probably 1,500 miles longer.

Q. The total distance being about what—about 5,000 miles?

A. Yes, just about; a little over 5,000 miles, I guess.

Q. And the all-rail route by the Union Pacific and its connections, being about 3,300 miles?

A. Yes, I should think so.

Q. Under those conditions, was not the volume of traffic moving by the Sunset Route to and from Portland very small?

A. Comparatively small, yes.

Q. Wasn't it always regarded as about a 3 per cent line, of that traffic—that is, getting only about 3 per cent of the Portland traffic?

A. I don't know that any records were kept. I never knew. My judgment would be that we never carried that much.

1427 Q. You never carried as much as 3 per cent of the total traffic?

A. No; still we might have; I don't know.

Q. You testified about some effort of the Canadian Pacific to handle business to California. About when was that?

A. I cannot recall just the time. It was during the time that I was in charge of the traffic of the Southern Pacific.

Q. It was not for a very long period, was it?

A. No, I think not.

Q. They were trying to force recognition as a differential line?

A. Yes.

Q. And they failed in that, and then retired from the business?

A. Yes.

Q. It was not a practicable route for them at equal rates with the other lines?

A. They were at a disadvantage.

Q. Wasn't the disadvantage so great that it was practically impossible for them to continue it?

A. In point of time, yes.

Q. Hasn't the Southern Pacific continued, since the acquisition of some of its stock by the Union Pacific, to absorb the rates from the seaboard territory to the same extent as before?

A. That is my understanding, although I have no personal knowledge of it.

Q. There has been no change in their policy in respect to that?

A. As far as my knowledge goes. Of course I am not connected with that interest now.

Q. Your connection continued, as a director and otherwise, up to 1904 or 1905, didn't it?

A. Yes, sir.

Q. There had been no change up to that time in the matter of——

A. There had been no change up to the time I severed my 1428 connection with the traffic department. I was in the Southern Pacific board after that time.

Q. And you knew of no change during that time?

A. No.

Q. The Union Pacific alone is practically without any rate-making power in the matter of transcontinental rates, is it not, Mr. Hawley?

A. I think that was so. I don't know what conditions exist today.

Q. Well, as long as your knowledge of it extended, it was merely a link of about a thousand miles in a transcontinental system?

A. Yes; they had no authority to make rates independent of the Southern Pacific.

Q. They could not make a rate without the concurrence of the Southern Pacific?

A. No, sir.

Q. As a matter of fact it was merely a connecting line of the Central Pacific controlled by the Southern Pacific, was it not?

A. Yes, a connecting line.

Q. You were never able to move any substantial part of the business west of Pittsburg by way of New York and the Morgan Line, were you, Mr. Hawley?

A. I never made any effort.

Q. Then, take the traffic from the Chicago territory, that is, from the territory west of Pittsburg, including Pittsburg, to Portland, Oregon. You never could move any of that in competition with the all-rail lines, could you, to any considerable extent?

A. Via New Orleans?

Q. Yes.

A. No, except by the all-rail lines to New Orleans and thence via the Southern Pacific line.

Q. You never succeeded in moving it to any considerable extent that way, did you?

A. Yes, we had a very large traffic.

1429 Q. To Portland I am speaking about.

A. Oh, not to Portland, no; none at all.

Q. With reference to the Colorado business, the business to Colorado points, moved by the Morgan Line, that went first to New Orleans, during the whole time you were connected with the company?

A. Yes.

Q. Didn't much of it move thence over the Texas & Pacific and its connections, Mr. Hawley? Didn't you have rates on that basis with the Texas and Pacific and its connections?

A. With the Texas & Pacific?

Q. Yes.

A. No, I think not.

Q. Your recollection is that that business moved via the Southern Pacific lines——

A. Entirely so.

Q. —and the Houston & Texas Central?

A. Yes, sir.

Q. To where—Fort Worth?

A. Yes.

Q. And wasn't it then turned over to what was formerly the——

A. The Union Pacific, Denver & Gulf.

Q. The Union Pacific, Denver & Gulf?

A. That is, the Colorado Southern.

Q. That was a line extending from Fort Worth to Denver?

A. Yes, sir.

Q. That was controlled by the Union Pacific when you first went to the Southern Pacific, wasn't it?

A. I think it was, yes.

Q. And the Union Pacific continued to control it until about when?

A. Until the receivership of the Union Pacific.

Q. The receivership of the Union Pacific was in 1893?

A. I don't know the year. I think though, it was in 1893.

Mr. SEVERANCE. Yes, it was 1893.

1430 Q. So that business moved then by way of the Morgan Line, the Southern Pacific lines to Houston, and thence the Houston & Texas to Fort Worth, and then the Union Pacific, Denver & Gulf, from the beginning of your connection with the Company in 1883 up to 1893, when the Union Pacific receivership commenced?

A. I think the traffic moved that way after the receivership of the Union Pacific, for a time. I think the receiver of the Union Pacific was also receiver of the Denver & Gulf line for a time.

Q. Did any other line out of New Orleans than the Southern Pacific participate in that business?

A. No, sir.

Q. When was the Morgan Line extended from New York to Galveston as well as to New Orleans?

A. We ran a boat periodically, that is, in the cotton season; we ran, I think, one and occasionally two steamers a week to Galveston.

Q. The Southern Pacific is now operating regularly a line from New York to New Orleans and from New York to Galveston?

A. That has taken place since my connection.

Q. There was a regular line to Galveston after your connection with the company ceased?

A. Yes, sir.

Q. During the time that you were carrying business to Colorado common points from New York, wasn't the Mallory line carrying it to Galveston?

A. Yes, sir, all they could get.

Q. And the Atchison system, through its Gulf, Colorado and Santa Fe line, was the principal connection of the Mallory for that business, wasn't it?

A. Yes, sir.

1431 Q. So, as a matter of fact, the Atchison, which owned the line at that time from Chicago to Colorado, Pueblo, I believe, while the Union Pacific owned the line from the Missouri River to Denver, the Atchison owning such line, worked that same business by way of its Gulf line?

A. Yes.

Q. The Mallory line and the Atchison probably got their share of that business, didn't they, by way of Galveston?

A. They got a small share.

Q. Didn't the Missouri, Kansas & Texas and the Gulf lines carry some of that business from Galveston to Colorado?

A. Yes, sir.

Q. Didn't they carry that business to Kansas City and deliver it to the Union Pacific there?

Mr. SEVERANCE. You mean the Mallory business or the Morgan line business?

Mr. LOVETT. I am speaking of the business of Galveston.

A. I don't know how it got there, but I suppose from the Mallory. I think the Mallory line worked with all those connections.

Q. And the Gould line would naturally take it to Kansas City and turn it over to the Union Pacific?

A. I don't know just how they did route it. I don't think it went to Kansas City, though.

Q. You don't think it did?

A. No.

Q. How did the business to Utah points, which you testified to, by way of the Gulf, reach Utah? That is, over what lines from Denver or from New Orleans? Didn't it go over the Union Pacific?

A. Well, the Denver & Rio Grande, and we occasionally had divisions in the Union Pacific.

1432 Q. The Union Pacific joined you in divisions on that business from Denver to Utah points?

A. Yes, sir.

Q. Of course, the interest of the Union Pacific in the Colorado and Utah business, moving all rail from the seaboard, was only for the carriage from the Missouri River——

A. That is all.

Q. —to final destination?

A. Yes, sir.

Q. As to business originating in the territory west of Pittsburg and going all-rail to New Orleans, that was worked in connection, of course, with the rail lines extending from those points to New Orleans?

A. Yes, sir.

Q. And on through rates?

A. Yes, sir.

Q. And the concurrence of those lines in those rates was necessary?

A. There was an established tariff.

Q. The lines that originated the business would naturally move it the way that they got the most revenue, the largest division, wouldn't they?

A. Well, they didn't always control.

Q. Generally they did, didn't they?

A. No.

Q. Did they control anything?

A. Not the initial line; controlled by our own agents—Southern Pacific agents principally.

Q. They would control only from local points, then?

A. That is all.

Q. But their influence would naturally be in sending it the route out of which they would get the most revenue?

A. Oh, naturally.

Q. The shipper is not interested in the matter of the division of rates between connecting lines, is he, Mr. Hawley?

A. No, sir.

1433 Q. You never attempted to compete for Colorado and Utah business by way of New Orleans, originating west of Pittsburg, did you, Mr. Hawley?

A. No, sir.

Q. Either by New Orleans, or by the Morgan Line?

A. No.

Redirect examination by Mr. Severance:

Q. Mr. Hawley, I think a little confusion grew out of the way Judge Lovett put one question (not intentionally, of course), with reference to the movement of that business to Colorado common points by way of Galveston. You testified, did you not, that so long as you were connected with the Southern Pacific you moved it by way of New Orleans?

A. By way of Algiers.

Q. Algiers is directly across the river from New Orleans?

A. Yes.

Q. On the Mississippi?

A. Yes.

Mr. Lovett. We will assume they are the same thing.

Q. So you moved it from New York to Algiers, opposite New Orleans, thence by Southern Pacific rail lines to Fort Worth, and then turned it over to the line leading to Colorado?

A. Yes.

Q. And you did not move any of it to Galveston and turn any of it over to other lines there?

A. We may have sent some freight by Galveston when we were running an irregular ship, delivering it to connecting lines at Galveston, but the running of ships to Galveston direct during that time, or during the time I had charge of the traffic, was only periodical; it was a very irregular service.

1434 Q. So, if there was anything of that kind it was a very trifling amount and you did not put in through rates in connection with any line out of New Orleans except the Southern Pacific, spoken of?

A. That is the only line we were working for, yes.

Q. Now, Judge Lovett also asked you if the Union Pacific, prior to the receivership, did not own the Colorado Southern or what was afterwards called the Colorado Southern?

A. It did, yes.

Q. It never owned it after the receivership, did it?

A. The same receivership, I think——

Q. I mean after the receivers were discharged.

A. Oh, no, sir.

Q. The Union Pacific in the reorganization did not acquire that line?

A. No, sir.

Q. When was the Union Pacific reorganized?

A. I think the Judge can answer that better than I can.

Mr. LOVETT. It was in 1897, according to my recollection.

Q. Then, for several years prior to the purchase of the Southern Pacific stock by the Union Pacific, the latter company had not owned the Colorado Southern?

A. No.

Q. That is right?

A. Yes.

Q. When was the Colorado Southern reorganized? It was reorganized about the same time as the Union Pacific, wasn't it?

A. I assume that, yes.

Q. And was separate and distinct from it at all times after the reorganization?

A. Entirely so.

Q. I think you testified to this before; I am not sure. Which
1435 way did most of the traffic move to Utah common points, that you got over that way? Over the Rio Grande or over the Union Pacific?

A. I should say over the Rio Grande.

Q. I think you so stated. Now, you stated, in answer to Judge Lovett, that the Union Pacific could not make a through rate without the concurrence of the Southern Pacific. Isn't it a fact that the transcontinental rates were made, as a rule, at meetings in which all the roads were represented?

A. By agreement, yes.

Q. And the Union Pacific was represented separately from the Southern Pacific?

A. Yes, sir.

Q. I mean of course during the time that you are familiar with it, prior to the purchase of the Southern Pacific stock by the Union Pacific.

A. Yes. I understood you to mean that.

Q. Now, in fixing transcontinental rates, were all the lines through to the coast considered as factors in arriving at a proper rate?

A. Yes, sir.

Q. That would include the Canadian Pacific, the Northern Pacific, the Great Northern, the Union Pacific to Portland, and all the lines down?

A. There were joint tariffs issued to which all lines were parties.

Q. In the matter of fixing rates, were the boat line by Panama and the ships around the Straits of Magellan at times factors?

A. They were factors, yes.

Q. They were factors in the rate?

A. Yes.

Q. And that competition was substantial competition, wasn't it?

A. Yes, sir.

Q. And it is because of that competition, in part at least, that rates have always been adjusted cheaper clear through to
1436 the coast than to points this side of the coast?

A. Than to intermediate points, yes.

Q. Now, Judge Lovett questioned you about the distance of the line from here to Portland, and the distance of the line to San Francisco by way of Portland. What is the distance by the Morgan line of steamers and the Sunset Route from here to San Francisco?

A. The distance by steamer from New York to New Orleans is taken, I think, at 1,800 miles, and to Galveston at 2,000 miles; but on a pro-rate basis the water line is taken at 3 miles for one of rail, which would reduce the mileage on an actual pro-rate from New York to New Orleans 600 miles.

Q. I am not speaking of the revenue at all.

A. You want the actual distance?

Q. I want the sailing distance, yes. How many miles do the ships have to make in going from New York to New Orleans?

A. 1,800 miles.

Q. Does that take them clear around the coast of Florida, and around? Can they make that in 1,800 miles?

A. That is the mileage, yes.

Q. How far is it from New Orleans to San Francisco by rail?

A. 2,495 miles—practically 2,500 miles.

Q. That makes about 4,300 miles from New York to San Francisco that way?

A. Yes, sir.

Q. What is the distance from here to Chicago?

A. I think the average distance is about 900 miles.

Q. And from there to Omaha?

A. 500.

Q. That is 1,400. And from there to Portland?

1437 A. I don't know what the exact distance is from Omaha to Portland.

Q. It is less than 2,000 miles, isn't it?

A. I think it is.

Mr. SPENCE. 1,800 miles.

Q. 1,800 miles. That makes 3,200 miles to Portland, and 4,300 from here around to San Francisco. What is the distance from Portland to San Francisco?

A. I don't recollect what that is.

Q. By boat?

A. I don't know what the mileage by boat is. We did not work the business that way; we worked by rail.

Q. The distance from Portland down to San Francisco by rail is about 600 miles, isn't it?

A. I think so, yes.

Mr. LOVETT. It is more than that. About 700 miles, I understand, by rail.

Q. Then, the distance from New York to Portland is about 3,200 miles by all-rail lines, and from there down to San Francisco is 700 more, making 3,900, and the boat line would be a little farther because it runs down the river and then goes out, but not much. Consequently the line from New York to San Francisco, all-rail to Portland, and by boat from there to San Francisco, is a little shorter, if anything, than the Morgan Line to New Orleans and by rail to San Francisco?

A. That is true.

Q. Now, taking that into account, it does not seem an impossible thing that in case of active competition, traffic could be routed that way, does it?

A. Oh, it could, I think, yes.

Q. And the Canadian Pacific, for a considerable time, did operate clear around through Canada and by Vancouver at a differ-
1438 ential of 10 per cent?

A. Yes.

Q. That is, they carried the traffic at 10 per cent less than the established rates in this country? That is right?

A. Well, they did that to only one point, I think.

Q. That is San Francisco?

A. That is San Francisco.

Q. Yes, I am speaking about San Francisco. Now, in view of the fact that the Union Pacific reached Portland over its own rails and there struck tidewater, with boat connections that existed or that could have existed, wasn't that a factor in fixing rates to the coast?

A. It might have been used as such, yes.

Q. Boats could have put into San Diego and connected with the Santa Fe—from Portland?

A. Yes.

Q. You know, don't you, as a matter of fact, that for years the O. R. & N. (that is, the Union Pacific line into Portland) operated a line of boats between Portland and San Francisco competitive with the Southern Pacific?

A. Yes, sir.

Q. Do you remember that at one time the Northern Pacific had a boat line connection with San Francisco from Puget Sound?

A. That may have been so.

Q. You don't remember about that?

A. No.

Recross-examination by Mr. LOVETT:

Q. Mr. Hawley, you said, in answer to Mr. Severance's suggestion, the fact that the Union Pacific had a line to Portland and a small

line of boats operating between Portland and San Francisco, might have been a factor in fixing transcontinental rates. You did not mean to say it was a factor, did you?

1439 A. No, sir.

Q. It was not as far as you know, was it?

A. I said it might have been used as such.

Q. And yet you don't know whether it was or not, do you?

A. I don't think it was.

Q. You don't think it was. The Great Northern has a line, and has had for a number of years, extending from St. Paul, Minnesota, to Puget Sound. It has never attempted to do any San Francisco business, as far as you know, has it?

A. I think not.

Q. The Northern Pacific has lines extending from the Lakes to Portland and Puget Sound. It has never attempted to do any business to San Francisco by boat line, has it?

Mr. Severance. He said he didn't know.

Mr. Lovett. Well, I am asking him.

A. I think at one time they did make an effort in that direction, but it was merely a flurry; it didn't amount to anything.

Q. It was very short-lived, wasn't it?

A. Oh, yes.

Q. The Canadian Pacific tried it only for——

A. For some considerable period.

Q. Trying to force a concession in the way of a differential?

A. Yes.

Q. Mr. Hawley, isn't this the reason or some of the reasons why the Southern Pacific can handle so successfully business from New Orleans, or by way of New Orleans or Galveston to the Pacific Coast, while the lines reaching the Pacific Coast on the north cannot do so; that is to say, isn't it true that the Southern Pacific, with its

1440 two or three sailings a week from New York to Galveston and New Orleans, is able to gather the business in New York, load it on its boats, deliver it at Galveston and New Orleans in complete lots to trains on its docks, in many instances loading the business in solid train lots and rushing it through to San Francisco, and isn't that an immense advantage against a line like the Northern Pacific or the Great Northern or any other rail line from the Missouri River which has to take the business as it comes to it, in broken lots and in irregular quantities? Isn't it true that such lines are unable to give anything like the service by rail and by boat from Puget Sound and Portland that the Southern Pacific gives by its Sunset Route?

A. Why, I think that has an influence, but that which had the greater influence was the entire line being under one control.

Q. The entire line being under one control?

A. There was no divided responsibility in the case of the settlement of claims and matters of that sort.

Q. Suppose the Union Pacific were under an entirely separate management and it should establish a boat line from Portland to

San Francisco and exert every effort it could command lawfully to get business for California, from the seaboard to Portland, and thence by the boats from Portland to San Francisco: wouldn't it be impossible for it to make any considerable headway in competing with the Southern Pacific, because it would be dependent on its connections east of the Missouri River for service from New York?

A. I think they would be only moderately successful.

1441 Q. Do you think they could be moderately successful?

A. Only so.

Q. I beg pardon?

A. I don't think they would be able to secure any considerable amount of business, no.

Q. If the Northern Pacific or Great Northern or Canadian Pacific or the Union Pacific could make any profit in competing for that business with the Southern Pacific by use of boats down the Pacific coast, don't you think, as a matter of business judgment, they would do so?

A. I think they would, yes.

Q. Don't you consider the fact that they do not attempt to do it, quite satisfactory evidence that, after carefully considering it, they think they can't make any money by it?

A. Oh, I think that is so.

Q. What is the distance from New York to Denver by the route over which the traffic moving by the Gulf or by New Orleans formerly moved?

A. I should think about 3,500 miles.

Q. About how far would it be by the all-rail lines?

A. I think it would be about 2,300 or 2,400.

Q. To Denver?

A. Oh, to Denver you are speaking of?

Q. Yes.

A. Oh, it would be about 2,000 miles.

Mr. SEVERANCE. It is a little over that, I think.

Q. I believe you said it is about 900 miles to Chicago, and 500 miles from Chicago to Omaha. It is 500 miles from Omaha to Denver, isn't it?

A. Yes, about that.

Q. About 1,900 miles. Had open rates, rates established under the Interstate Commerce Act, been maintained, do you think much business would move that way, or does move that way? Isn't it true that the quantity was always small?

A. On equality of rates?

1442 Q. Yes.

A. No, it would not.

Q. The open rates were always the same, weren't they?

A. I don't understand what you mean by "open rates."

Q. What was the differential?

A. I don't remember what the differentials were now, but there was an established lower rate via the Gulf than there was by all-rail.

Q. Wasn't the volume of traffic that moved even on those differentials very small compared with the whole business?

A. Oh, I think that may be so.

Q. What is that?

A. I think that is so.

Q. And on equality of rates there would be practically none?

A. No, sir.

Q. There has been no change so far as the separate agencies in New York are concerned? That is, both the Union Pacific and the Southern Pacific have separate agencies?

A. That is my understanding, yes.

Q. Haven't they both been actively soliciting business, according to your understanding, ever since the purchase, as well as before?

A. They were during my connection with the Southern Pacific interests.

Q. There has been no change.

A. I have no knowledge of it since.

Q. What is that?

A. I have no knowledge of the traffic.

Q. Boston and Philadelphia are the same way? They maintain separate agencies in Boston and Philadelphia?

A. They did up to the time I severed my connection.

Q. And the conditions continued the same as far as the 1443 soliciting by those agencies was concerned?

A. Yes.

Q. Mr. Severance asked you whether in fixing these rates over the all-rail lines to California points, the Union Pacific and the Southern Pacific were not represented by separate agencies.

A. Were what?

Q. Were represented separately in the meetings for that purpose?

A. No, all lines were represented.

Q. You did not mean by your answer to Mr. Severance to qualify your previous statement that the consent of the Southern Pacific was necessary, did you?

A. Naturally it was necessary; they had to be a party to it.

Q. So the presence of representatives of both the Southern Pacific and the Union Pacific is entirely consistent with the fact that an agreement between them was necessary, isn't it?

A. Surely.

Q. The lines east of the Mississippi River were represented in such meetings, too, weren't they?

A. Yes, sir.

Q. Both the Union Pacific and the Southern Pacific since 1901 have been represented separately in such meetings, as far as you know, haven't they, or do you know about that?

A. I have no knowledge to the contrary. I don't know anything about it.

By Mr. SEVERANCE:

Q. You stated, Mr. Hawley, that the agencies outside of New York and points in this region were consolidated after the acquisition of this stock of the Southern Pacific by the Union Pacific.

A. Yes.

Q. That was done by reason of common management?

1441 A. And economy, I take it.

Q. And you understood at the time, after the Union Pacific purchased the stock of the Southern Pacific, it took over the management and control of the Southern Pacific Company, didn't you?

A. Yes, sir.

Q. Did you have any knowledge of the pool that used to exist many years ago on transcontinental business?

A. On transcontinental?

A. Yes.

A. Yes, I think there was a pool existing, but I do not remember the status of it.

Q. You remember that the Northern Pacific shared in that pool as applied to California business, had a percentage in it?

A. I think they did, but I could not say positively.

Q. And the Union Pacific, the Short Line, and the O. R. & N. had a percentage in it, had they not?

A. If the Northern Pacific did, they did, of course.

By Mr. LOVETT:

Q. Have you any distinct recollection as to that matter?

A. No, I have not.

Q. You really don't know whether the Northern Pacific had any interest in the pool or not?

A. I could not say.

Q. Or whether the Union had or the other lines had? You don't know as to that?

A. No, I do not.

Q. Do you know when that pool ceased to exist?

A. No, I have no recollection.

Q. It must have been prior to 1890; wasn't it?

A. 1891? Oh, yes.

Q. It must have been prior to 1890?

A. Yes.

1445 Q. You answered Mr. Severance just now to the effect that after the acquisition of the stock of the Southern Pacific Company by the Union Pacific, the Union Pacific took over the management of the Southern Pacific. I suppose you mean that common officers of the two companies were elected?

A. Yes.

Q. Each has continued to operate its own lines? Is that correct?

A. That is right.

By Mr. SEVERANCE:

Q. They brought them under common direction, didn't they?
A. Yes, sir.
Q. Mr. Stubbs became the head of the traffic department of both lines?
A. Yes, sir.
Q. And Mr. Kruttschnitt of the operation?
A. That is right.

1446 HARRY C. BLYE,

being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Blye, where do you live?
A. New York City.
Q. What is your business?
A. I am in the railroad transportation business.
Q. In what capacity?
A. General agent of the trunk line association.
Q. How long have you occupied that office?
A. Ever since it was an office.
Q. How many years is that?
A. About thirty, I guess.
Q. You have been in that office for thirty years?
A. Yes.
Q. What are your functions?
A. I have charge of all the clerical force and the statistics; general commercial end of the business.
Q. What are the statistics which you have? You say you have charge of statistics. What are they?
A. Reports of the tonnage moving from the seaboard to west of Pittsburg and Buffalo, to and beyond the western termini of the trunk line.
Q. From what sources do you get this information?
A. From impression copies of the railroad way-bills.
Q. So, you have the original documents in your possession to show this tonnage?
A. Copies of them.
Q. Impression copies?
A. Yes.
1447 Q. And from those impression copies you make tables?
A. Yes, sir.
Q. And you tabulate the movement of traffic?
A. Yes, sir.
Q. That does not show revenue, does it? It only shows tonnage?
A. Tonnage only.
Q. And that includes what territory?
A. Everything beyond and including what is called the western

termini of the trunk line. It starts from Parkersburg on the south and runs up to Toronto on the north.

Q. That is to say, you have statistics that show the movement of tonnage from this territory here, east of Pittsburg and Buffalo?

A. From the Atlantic seaboard.

Q. From the Atlantic seaboard?

A. From Philadelphia, Baltimore and New York.

Q. Well, that is what I thought. I misunderstood you before. Your statistics show the movement of tonnage out of Philadelphia, Baltimore and New York to the West?

A. Yes, sir; they show part of the movement. They show how much each trunk line gets of that tonnage.

Q. Do they also show the amount that the Morgan Steamship Line gets?

A. They do not now, but they did for a while.

Q. To what time did you have those statistics?

A. I think the Morgan Line stopped reporting about 1901.

Q. But for how many years before that had you had the reports of the Morgan Line business?

A. Oh, I guess shortly after the Morgan Line got to form a part of the Sunset Route.

Q. Do your statistics show the transcontinental traffic separately?

A. They show what we call California traffic separate
1448 from other traffic.

Q. And therefore you have the figures in your office which show for a series of years up to 1901 the California traffic moving out of New York, Baltimore and Philadelphia over the Morgan Line?

A. No, not over the Morgan Line out of Philadelphia and Baltimore, Mr. Severance; only out of New York.

Q. Out of New York, of course. Over the Morgan Line from New York, and all-rail lines from New York, Baltimore and Philadelphia?

A. Yes; and part of the time out of Boston. I think the Boston people stopped reporting along about 1901.

Q. The traffic that originates at Philadelphia, Baltimore or Boston that is to go to the West over the Morgan Line is first brought to New York and then shipped from here?

A. I don't know anything about it.

Q. You don't know how it is handled?

A. I don't have anything to do with that.

Q. All you know are these statistics?

A. Yes.

Q. Are those in convenient shape so that you could bring them in here, or would you have to make copies of them?

A. I suppose all you want is results for the years? You don't want a mass of details, do you?

Q. That is it, exactly.

A. I could probably show you, without much trouble, how much traffic went out—that is, how much they said went out. I don't know

whether I got it all or not. I had to take other people's word for it. My friend Spence—this is not testimony, but my friend Spence over there used to think I was not entitled to it, and he would not let me have it.

1449 Q. How much time would it take you to make up a table of that sort, say beginning in 1883, and down to 1901, when the Morgan line ceased to report?

A. You just want to know how much——

Q. The total tonnage?

A. The total tonnage that went out of the seaboard, divided into two groups first, California and westbound tonnage, and how much of the California tonnage went all rail and how much went what we call steamer line?

Q. That is right.

A. That won't take very long.

Q. How long will it take you to make that up?

A. It might take me two or three weeks, but I can have a clerk do it in a couple of hours, I guess.

Q. You can have it back here this afternoon. Suppose you bring that in here at 2 o'clock? Can you do that by 2 or 3 o'clock this afternoon?

A. Wouldn't it do you to-morrow just as well?

Q. Yes, to-morrow morning.

A. I would like to look over it a little bit myself. I have to stick my name to it, and I want to know something about it.

Q. I will excuse you now, Mr. Blye.

A. That is all you want; you simply want to know the amount of tonnage?

Q. I want to know the amount of tonnage that is moving two ways, that is all. I understand your statistics would not enable you to divide that movement of all-rail traffic between the different lines west of the Missouri River?

A. Oh, no. We lose all interest in it after it gets away from here. We don't know how much of it goes over the lines west of Buf-
falo and Pittsburg, and we don't care. Our statistics are
1450 made primarily to show what proportion of the traffic is moving over their lines. They don't care how it goes after they get rid of it.

Q. Well, I don't think you can give us anything that would throw any light on the matter except the total tonnage.

A. That is all. I have no statistics of traffic west of the termini of the trunk lines.

Q. That is all you can give us, the statistics for the years 1883 to 1901?

A. As far as I have got them, yes.

Cross-examination by Mr. Lovett:

Q. What traffic is covered by these statistics that you propose to get up?

A. Traffic originating at New York City, Philadelphia, Baltimore, and Boston destined to California and showing for New York how much of it went all rail to California, as far as I know, and how much of it was reported by the steamship lines that were reporting that traffic from New York.

Q. Showing that for New York, but showing what for Philadelphia, Baltimore, and Boston?

A. Only the all-rail traffic. I have no record of steamer traffic out of Philadelphia and Baltimore.

Q. And do you know whether the reports of the steamship lines included freight originating in Philadelphia, Baltimore, and Boston, or only that in New York?

A. The Morgan Line reported to us the traffic that they carried out of New York, delivered to them by merchants in New York.

Q. By merchants in New York?

A. By merchants in New York. I can probably explain
1451 that. The object of the report that I made was to show the division of New York traffic as between the trunk line and the steamship line, and of course it only included the tonnage which the two opposite parties could get by solicitation. If the Morgan Line agents up in the interior brought a lot of traffic down to New York and shipped it over the Morgan Line, the trunk lines had no opportunity to get that traffic away from them after they got it, and so that was all cut out, and the reports that I would give you will not include any traffic, speaking broadly, that was not delivered to the Morgan Line by some truckmen at their pier from a shipper in New York.

Q. How would you know, Mr. Blye, whether this traffic secured at Philadelphia, for instance, and brought to New York and turned over to the Southern Pacific——

A. I did not get the traffic secured in Philadelphia and brought to New York. They would not give me that.

Q. You would not know by the statements furnished you by the Morgan Line whether that was included or not, would you?

A. I would have very good reason to believe that it was not. It was not part of their agreement to give us anything but New York traffic.

Q. But no records reached you, giving you any information on that, one way or the other, did there?

A. No, sir.

Q. Just a matter of opinion?

A. It was a matter of agreement.

Q. What is that?

A. That is what they were to report; they were to report their New York traffic.

Q. That is what they agreed to report, only the New York traffic?

A. Yes, and I never knew them to report more than they agreed to.

1452 Q. They didn't do that very cheerfully, did they?

A. Well, if there was a good way out of it, they didn't sometimes.

Q. What lines constitute the trunk line association of which you are secretary?

A. The New York Central, the West Shore, the Baltimore & Ohio, the Pennsylvania, the Lackawanna, the Lehigh Valley, the Ontario & Western, and the Central Railroad of New Jersey. I think that is all of them.

Q. All lines operating out of New York?

A. All lines operating out of New York.

Q. The Southern Pacific was not a member of that association, was it?

A. No.

Q. Did you get the same report from the Mallory line of steamers operating from New York?

A. Part of the time.

Q. They discontinued, did they?

A. Well, their figures got down to be nothing, and then they thought there was no use in sending it in.

Q. Did the Southern Pacific figures get down to nothing, too?

A. No, they got mad about something and stopped reporting.

Q. Didn't you understand that they quit because they felt they were giving these lines too much information about their business?

A. Well, I don't know. I didn't care. They just simply quit, and I said, "All right, if you don't want to report, you don't have to, and it is for my superior officers to see you and find out why you don't, and if they don't want you to, I don't want you to."

Q. And you didn't know why?

A. I never knew really why.

Q. They quit about nineteen hundred and when?

A. I think 1901 was the last.

1453 Mr. SEVERANCE. It was later than that.

WITNESS. It might have been somewhere in 1902. The last complete report I have, I think, is for the year 1901.

Q. Suppose you ascertain the date of the last report, and when you bring the other statement in, let us know.

A. All right, I will do that.

Mr. SEVERANCE. In view of what appears now as the nature of your statistics, you need not bring in the reports as to Baltimore and Boston and Philadelphia, because we merely want those for the purpose of comparison, and if you have the report on the steamship business which is local to New York, then give us the local business by rail from New York also—just those two.

WITNESS. You just simply want the California tonnage that moved out of New York in competition between the boats and the all-rail lines?

Mr. SEVERANCE. That is all.

By Mr. LOVETT:

Q. Do those reports include Portland business as well as California points?

A. Oh, yes, everything that went west of Ogden and Yuma.

Q. Isn't it a fact that it includes all the Pacific coast points?

A. Everything that went beyond Ogden and up into the northwest and down into the southwest, wherever the Pacific coast rates applied.

Q. It included all Pacific coast points and not merely California points?

A. Oh, not merely California.

(The witness was excused until 10 o'clock to-morrow morning.)

1454 FRANK W. WHITE,

being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Give us your full name, and your position with the Interstate Commerce Commission.

A. My name is Frank W. White, and I work in the Auditor's office of the Interstate Commerce Commission, in the Division of Rates and Transportation.

Q. That is, your office has charge of the tariffs?

A. Yes, sir.

(Papers marked Complainant's Exhibits 81-A to 81-K (White) inclusive.)

Q. I show you Complainant's Exhibits 81-A to 81-K. Were those prepared in your office?

A. Yes, sir.

Q. Under your direction?

A. Yes, sir.

Q. And I suppose you had clerks assisting you?

A. Yes, sir.

Q. Did you examine them all with the tariffs after they were prepared?

A. Yes, sir.

Q. Take Exhibit 81-A; please state what that is.

A. It is a statement showing class and commodity rates from points east of Missouri River to California terminals, from June, 1897, until and including the present time.

Q. 81-A in connection with the other exhibits here shows them down to the present time?

A. Yes.

Q. But 81-A shows the rates down to January 18, 1904, does it not?

1455 A. No, sir, it shows them from January, 1904, to the date, which was about October, I think.

Q. The first column shows the date the tariff was effective, does it not?

A. Yes, sir.

Q. The next column is the point of origin of the freight, these being westbound rates?

A. Yes, sir.

Q. "New York and common points"; will you tell us what that is?

A. "New York and common points" are points in a general way east of Buffalo and Pittsburg and down as far as just east of Bristol, Tennessee. I can tell you exactly by referring to the tariffs.

Q. Well, describe it generally.

A. And all territory east of there.

Q. And north of what point?

A. North of that line to the Norfolk & Western, from Bristol to Norfolk.

Q. And all territory east of this line and north of this line——

A. As far as that tariff is concerned is understood to be New York and common points.

Q. That is, the rates in all that territory by all lines to Pacific coast terminals are the same, or as stated in here, in this exhibit?

A. Yes, sir; by the all-rail lines.

Q. I understand. This also states the rates by the Southern Pacific line and the Morgan Steamship Line to the same points, doesn't it?

A. Yes, sir, one of these statements does—not this 81 A, though.

Q. Doesn't that include the Morgan?

A. No, sir.

Q. I think it does.

A. 81 and something does.

Q. Yes, it is the same thing.

A. Oh, yes, it does, too.

1456 Q. That is, this statement 81 A shows the rates from New York and common points by all rail lines and by the Southern Pacific and Morgan Steamship Line to what is known as California terminals?

A. Yes, sir.

Q. And also by the Mallory line and its connections?

A. Yes.

Q. Now, what do you call California terminals?

A. In a general way they are San Francisco, Sacramento, Stockton, Los Angeles, Marysville, San José. I have a list of them in the tariff there.

Q. Portland?

A. Yes, sir, Portland.

Q. What other places?

A. Portland, of course, is not a California terminal; it is a Pacific coast terminal.

Q. Yes; I meant Pacific Coast terminal, not California.

A. San Diego and Los Angeles.

Q. Get the tariff. If there are not too many of them we will have them all in.

(Witness refers to tariffs.)

Q. Describe generally what you mean by Pacific coast terminals.

A. They are points that are adjacent to the Pacific coast, not what you might call inland points; in fact, all the big cities on the Coast.

Q. Between what point on the south and what point on the north?

A. The California terminals, I should say, went from National City, or San Diego, to, I think, Vancouver.

Q. That is, you mean the Pacific coast terminals?

A. Yes, Pacific coast terminals.

Q. Now, Complainant's Exhibit 81–A shows the rates from
1457 New York common points, Pittsburg-Buffalo common points, Cincinnati-Detroit common points, Chicago common points, Mississippi River common points and Missouri River common points to what terminal points on the Pacific coast?

A. To what are known as the California terminals.

Q. Does this include also Portland?

A. Yes, that includes also Portland.

Q. What other points in Oregon?

A. I do not think there are any. East Portland, perhaps.

Q. Have you a map showing the territory included within each of these eastern common points, like New York common points, Cincinnati and Detroit common points, etc.?

A. I haven't one just this minute, but I have been informed this morning that I will have one after dinner.

Q. You will have one after lunch?

A. Yes, sir.

Q. Then, I will leave that.

Q. Generally speaking, are the rates the same from all these eastern points to the California common points, including Portland by all lines, rail and the rail and water lines by the Gulf?

A. Generally speaking they are, yes, sir.

Q. I notice there are some slight additions on some commodities. The class rates are the same, aren't they?

A. The class rates are the same.

Q. Practically, then, the rates are the same from all territory east of the Missouri River?

A. Practically so, except on some few commodities.

Q. You have given here under head of "Commodities" only a limited number of commodities. Is what you state as to the
1458 rates being the same equally true of all classes of commodities?

A. Yes, sir, substantially so.

Q. Why did you select these particular commodities—as principal or important commodities?

A. No particular reason, except they were selected at random.

Q. Are they important commodities?

A. They are important commodities.

Q. And representative commodities, are they?
A. And representative commodities.
Q. Complainant's Exhibit 81–B is what?
A. That is a statement showing east-bound rates.
Q. From the same terminals to the same eastern points?
A. Yes, sir.
Q. State what Complainant's Exhibits 81–C, 81–D, and 81–E are.
A. Statements showing the rates to and from Colorado common points, both all-rail and sea and rail.
Q. The rates to and from Colorado common points by rail and by the Southern Pacific in connection with the steamship line from New York?
A. Yes.
Mr. LOVETT. And the Mallory Line.
Mr. KELLOGG. And the Mallory Line, yes; I meant that.
Q. Complainant's Exhibit 81–F is what?
A. It is a statement showing some few commodities in addition to those shown in 81–A.
Q. Showing the rates from New York common points and other common points, the same as 81–A to California terminals, but adding certain other commodities.
A. Adding certain commodities.
1459 Q. Please explain what Complainant's Exhibits 81–G, 81–H, 81–I, 81–J, and 81–K are.
A. 81–G is a statement bringing down 81–A to the present time, including the new rates which went into effect January 1, 1909.
Q. 81–A simply came down to the time you made that up, sometime in October, 1908?
A. Yes.
Q. Those statements bring these rates down to the present time, including the rates going into effect January 1, 1909?
A. I will amend that. I said 81–A before; 81–A seems to be westbound, but 81–G is supplementary to eastbound, which is 81–B.
Q. Yes, that is right. In other words, these sheets, G, H, I, J, and K, bring the east and westbound rates, shown by 81–A to 81–F, down to the present time?
A. Down to the present time.
Q. And they are made in the same way?
A. And they are made in the same way.
Q. And taken from the tariffs?
A. Yes, sir; taken from the tariffs.
Q. And they show the rates to and from California common points into the same territory as 81–A to 81–F?
A. Yes, sir.
Mr. KELLOGG. I offer in evidence Complainant's Exhibits 81–A to 81–K (White), inclusive.
There was no objection.
Complainant's Exhibits 81–A to 81–K (White) are as follows:

COMPLAINANT'S EXHIBIT 81 A.—(White).

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION.

Statement showing class and commodity rates in effect June 24th, 1897 to date, from and to various points named below.

[Rates in cents per hundred pounds.]

Effective—	From— \ To—	Pacific coast terminals.																				
		Commodities.											Classes.									
		Dry goods n. o. s., in cases (A. Q.).	Cotton piece goods.	Cast-iron cook stoves (C. L.).	Canned goods (C. L.).	Glassware (except cut) (C. L.).	Starch (A. Q.).	Drugs (C. L.).	Crockery (C. L.).	Nails (C. L.).	Agricultural implements (C. L.), reapers, mowers, etc.	Beer.	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
June 24, 1897	New York and Common Points..... Pittsburg & Buffalo Common Points. Cincinnati & Detroit " "	150	100	110	75	85	100	100	95	75	115	100	240	215	200	170	165	160	110	100	100	95
	Chicago & Common Points.....	150	100	110	65	85	100	100	95	50	115	100	240	215	200	170	165	160	110	100	100	95
	Mississippi River Common Points...	150	100	110	65	85	100	100	90	50	110	100	240	215	200	170	165	160	110	100	100	90
	Missouri " " " ...	150	100	110	65	85	100	100	85	50	105	100	240	215	200	170	160	160	110	100	95	85
December 15, 1897..	New York and Common Points..... Pittsburg & Buffalo Common Points. Cincinnati & Detroit " "	150	100	110	85	85	100	100	95	75	115	100										
	Chicago and Common Points.....	150	100	110	75	85	100	100	95	66	115	100										
	Mississippi River Common Points...	150	100	110	75	85	100	100	90	65	110	100										
	Missouri " " " ...	150	100	110	75	85	100	100	85	65	105	100										
December 15, 1897..	New York.....				a 75					a 66												
February 8, 1898...	Chicago.....									50												
February 19 1898..	New York and Common Points.....				75																	

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May 9, 1898	New York and Common Points				b 85																		
	Pittsburg & Buffalo Common Points																						
	Cincinnati & Detroit " "																						
June 25, 1898	New York & Common Points	260	150	c 125	d 100	100	e 100	125	.....	75													
	Pittsburg & Buffalo Common Points																						
	Cincinnati & Detroit " "																						
	Chicago & Common Points	260	150	c 125	95	100	e 100	125	.....	f 75													
	Mississippi River Common Points	260	150	c 125	95	100	e 100	125	.....	f 70													
	Missouri " " "	260	150	c 125	90	100	e 100	125	.....	f 65													
June 25, 1898, to date	New York & Common Points												300	260	220	190	165	160	125	100	100	95	
	Pittsburg & Buffalo Common Points																						
	Cincinnati & Detroit " "																						
	Chicago & Common Points												300	260	220	190	165	160	125	100	100	90	
	Mississippi River Common Points												300	260	220	190	160	160	125	100	95	85	
	Missouri " " "																						
October 10, 1899	Chicago & Common Points									60													
	Mississippi River Common points																						
	Missouri River Common Points																						
January 18, 1904, to date.	New York & Common Points	300	g 100	135	.....	110	.....	140	.....	80	125												
	Pittsburg & Buffalo Common Points																						
	Cincinnati & Detroit " "																						
	Chicago & Common Points	300	g 100	125	.....	110	.....	140	.....	65	125												
	Mississippi River Common Points	300	g 100	125	.....	110	.....	140	.....	65	120												
	Missouri River Common Points	300	g 100	125	.....	110	.....	140	.....	65	115												

a Applies to California Terminals only and via Gulf Route and Galveston, Texas.
b " " " " " " from New York via Gulf Route and Galveston.
c Effective July 11, 1900, 115 per 100 lbs.
d From New York to California Terminals via Gulf Route and Galveston.
e Applies C. L. L. C. L. 150 per 100 lbs.
f Effective Jany. 18, 1900, 60 c. per 100 lbs
g Applies C. L. L. C. L. 150 per 100 lbs.

Classes—governed by Western Classification.

COMPLAINANT'S EXHIBIT 81 B.—(White).

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION.

Statement showing class and commodity rates from January 10, 1898, to date, from and to various points named.

[Rates in cents per hundred pounds.]

Effective	From— / To—	Pacific coast terminals.															
		Commodities.						Classes.									
		Canned goods. (C. L.)	Coffee, green. (C. L.)	Dried fruit in sacks. (C. L.)	Nuts. (C. L.)	Raisins in boxes. (C. L.)	Hops. (L. C. L.)	1.	2.	3.	4.	5.	A.	B.	C.	D.	E
Jany. 10, 1898	Missouri River Common Points	75	.....	120	130	100	a 150	300	260	220	180	160	160	140	110	95	85
	Mississippi River " "	75	.....	120	130	100	a 150	320	280	230	185	165	167	148	115	100	90
	Chicago & Common Points	75	.....	120	130	100	a 150	340	300	240	190	170	175	155	120	105	95
	Cincinnati, Detroit & Common Points	75	b 85	120	130	100	a 150	345	305	245	195	175	180	160	125	110	100
	Pittsburg, Buffalo " " "	75	b 90	120	130	100	a 150	350	310	250	200	180	180	160	125	110	100
	New York and Common Points	75	100	120	130	100	a 150	370	330	265	210	185	185	165	130	115	105
Dec. 28, 1898, to date	Missouri River Common Points	.....	c 75	.....	.....	.....	e 150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Mississippi River " "	.....	c 75	.....	.....	.....	e 150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Chicago and Common Points	.....	c 75	.....	.....	.....	e 150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Cincinnati, Detroit & Common Points	.....	g 75	.....	.....	.....	e 150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	Pittsburg, Buffalo & " "	.....	h 75	.....	.....	.....	e 150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
	New York and Common Points	.....	i 75	.....	.....	.....	e 150	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Classes governed by Western Classification
b Effective January 28, 1898, 75c. per 100 lbs.
a " July 16, 1898, 200c. " " "
e " September 6, 1898
c " January 18, 1900, 80c. per 100 lbs.
g " " 12, " 85c. " " "
h " " 18, " 90c. " " "
i " " 18, " 100c. " " "
f " April 1, 1901, 200c. " " "

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The rates eastbound apply same as westbound, except that the exceptions are as follows:

"Rates provided herein will not apply in connection with Southern Pacific Co. (Pacific System) from points in California south of Stockton, Lathrop, Trady, or San Jose, on shipments routed via Portland or East Portland, Oregon."

Trans-Continental Freight Bureau I. C. C. Nos. 50, 97, 144, 195, 318.

COMPLAINANT'S EXHIBIT 81 C.

INTERSTATE COMMERCE COMMISSION, DIVISION OF RATES AND TRANSPORTATION.

Statement showing class rates, all rail, from Colorado Common Points to New York, N. Y., January 1, 1898, to date.

[Rates in cents per hundred pounds.]

Effective.	From—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
January 1, 1898.	Colorado Common Points to Mississippi River	185	145	115	92	72	84½	64½	57	48½	41
	From—	1.	2.	3.	4.	5.	5.	6.	6.	6.	6.
	Mississippi River to New York, N. Y	87	75½	58	40½	35	35	29	29	29	29
	Through rate	272	220½	173	a 132½	107	119½	93½	86	77½	70
Effective.	From—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
January 1, 1908, to date.	Colorado Common Points to Mississippi River	185	145	115	92	72	84½	64½	57	48½	41
	From—	1.	2.	3.	4.	5.	5.	6.	6.	6.	6.
	Mississippi River to New York, N. Y	87½	70	58½	41	35	35	29	29	29	29
	Through rate	272½	221	173½	a 133	107	119½	93½	86	77½	70

Statement showing class rates, all rail, New York, N. Y., to Colorado Common Points, January 1, 1898, to date.

Effective.	From—	1.	2.	3.	4.	5.	5.	6.	6.	6.	6.
January 1, 1898.	New York, N. Y., to Mississippi River	87	75	58	41	35	35	29	29	29	29
	From—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
	Mississippi River to Colorado Common Points	185	145	115	92	72	84½	64½	57	48½	41
	Through rate	272	220	173	a 133	107	119½	93½	86	77½	70
Effective.	From—	1.	2.	3.	4.	5.	5.	6.	6.	6.	6.
January 1, 1908.	New York, N. Y., to Mississippi River	88	76	59	41	35	35	29	29	29	29
	From—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
	Mississippi River to Colorado Common Points	185	145	115	92	72	84½	64½	57	48	41
	Through rate	273	221	174	a 133	107	119½	93½	86	77½	70

Trans-Missouri Freight Rate Committee ICC. 54.

a Chicago combination $1.32, made 97 cents Colorado Common Points to Chicago, 35 cents east thereof.

COMPLAINANT'S EXHIBIT 81 D

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION.

Statement showing class rates, from Colorado Common Points, via Gulf Routes to New York, N. Y., May 12, 1897, to date.

[Rates in cents per hundred pounds.]

Effective—	From—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
May 12, 1897	Colorado Common Points to New York, N. Y.	210	178	152	127	102	108½	88½	81	72	65
February 8, 1902, to date	" " " " " " " "	200	173	147	127	102	103½	88½	81	72	65

Statement showing class rates, from New York, N. Y., via Gulf Routes to Colorado Common Points, March 2, 1897, to date.

Effective—	From—	1.	2.	3.	4.	5.	A	B.	C.	D.	E.
March 2, 1897	New York, N. Y., to Colorado Common Points	186	170	109	89	73	90½	72½	60	51½	44
" 17, "		229	185	141	111	90	105	83	73	64½	57
January 1, 1898		233	190	147	117	93	108½	82½	75	66½	59
May 31, "		"	185	"	"	"	106½	"	"	"	"
November 24, "		"	190	"	"	"	108½	"	"	"	"
May 9, 1899[a]		"	185	"	"	"	106½	"	"	"	"
June 26, "		205	165	132	109	84	97	81½	74	65½	58
November 30, "		233	190	147	117	93	108½	82½	75	66½	59
May 21, 1900		"	185	"	"	"	106½	"	"	"	"
December 24, "		"	190	"	"	"	108½	"	"	"	"
July 1, 1901		"	189	"	116	"	"	"	"	"	"
December 23, "		"	190	"	"	"	"	"	"	"	"
June 1, 1903		"	189	"	"	"	"	"	"	"	"
January 1, 1904		"	190	"	"	"	"	"	"	"	"
July 8, 1904		"	189	"	"	"	"	"	"	"	"
January 2, 1905		"	190	"	"	"	"	"	"	"	"
May 15, "		"	189	"	"	"	"	"	"	"	"
January 2, 1906		"	190	"	"	"	"	"	"	"	"
June 1, "		"	189	"	"	"	"	"	"	"	"
December 14, "		"	190	"	"	"	"	"	"	"	"
June 15, 1907		"	189	"	"	"	"	"	"	"	"
July 15, "		"	190	"	"	"	"	"	"	"	"
February 5, 1908, to date		234	191	148	116	93	108½	82½	75	66¼	59

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U. P. D. & R. G. R. R., I. C. C., 194.
Colo. & Southern Ry., I. C. C., 309.
Seaboard-Colo. Utah Freight Assn., I. C. C., 10, 12, A 1, A 4, A 5, A 8, A 10, A 12, A 14, A 16, A 20, A 22, A 24, A 26, A 28, A 30, A 32, 34, and 34 A.

	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
a June 19, 1899	220	175	140	114	89	102	82½	75	66½	59

COMPLAINANT'S EXHIBIT 81 E (footnotes to Exhibit 81 D).

These rates applied via the all-rail lines to the Missouri River in connection with the Union Pacific R. R. and connections and via New Orleans, La., and Southern Pacific Co.; they also applied via the Gulf Route and the Southern Pacific Co. direct and via ocean lines through Norfolk or Savannah as well as via the northern lines via St. Paul, subject to the following exceptions which are noted on title page of tariff.

1. Rates provided herein will not apply to points in California, south of Lathrop, Stockton, San Jose, on shipments routed via Portland and East Portland, Oreg.

2. Rates provided north of Portland, East Portland, Albina and Astoria, Oreg., will not apply via the lines of the Southern Pacific Co., or Oregon R. R. & Navigation Co.

3. Rates provided herein from points east of Chicago, will not apply to points in California, via the Great Northern or Northern Pacific Ry's. in connection with the Southern Pacific Co.

The Pacific S. S. Co. which operates the coastwise service between Washington, Oregon and California was not named as a party to this tariff.

On page 3 of amendment 1, to I. C. C. No. 1, effective June 24, 1897, the following note is carried: "Except as hereinafter provided the authorized rates to California points will apply (to San Francisco only) from Territories Nos. 1, 2, and 3 defined on page 7 of tariff (which are Missouri River common points territory; Mississippi River Common points territory and Chicago Common points territory), via the Northern Pacific Ry., Tacoma, Wash., care the Pacific Coast S. S. Co., via Great Northern Ry., Spokane, Wash., Oregon R. R. & Navigation Co., via Portland, Oreg., and Steamer.

COMPLAINANT'S EXHIBIT 81 E (footnotes to Exhibit 81 D)—Continued.

Exception, rates as above provided will not apply via the Great Northern Ry. or Northern Pacific Ry., from points south of Kansas City, Mo., nor from points south or east of East Carondolet, Ill.

Effective September 23, 1897, Supplement 7 to I. C. C. No. 1, cancelled the application of all rates via the Union Pacific System in connection with Oregon Short Line and Oregon R. R. & Navigation Co., to the North Pacific Coast Terminals.

Effective October 14, 1897, rates were restored by Supplement 9 to I. C. C. No. 1.

The above rates are still in effect, as per Trans-Continental Freight Bureau I. C. C. No. 375.

These rates also apply via Southern Pacific Co., all rail or sea and rail.

Trans-Continental Freight Bureau I. C. C. Nos. 1, 44, 88, 142, 375.

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Complainant's Exhibit 81 F. (White).

Interstate Commerce Commission,
Division of Rates and Transportation,
September 22, 1908.

Statement showing Commodity Rates, from various points named below to California Terminals, supplementary to statement showing Class and Commodity Rates from New York, N. Y., etc., to Pacific Coast Terminals, as per Statement No. 1519.

[Rates in cents per hundred pounds.]

Dates.	From— / To—	California terminals.							
		Structural iron, angle bars, etc. (C. L.)	Rubber boots & shoes. (L. C. L.)	Twine. (C. L.)	Electrical machinery. (C. L.)	Paint, n. o. s., in wood. (C. L.)	Soap, laundry. (C. L.)	Glauber salts. (C. L.)	Woodenware n. o. s. (C. L.)
June 24, 1897	New York & Common Points Pittsburg & " " Cincinnati & " " Chicago & " " Mississippi River Common Points Missouri River " "	75	100	90	150	75	75	80	100
June 25, 1898	New York & Common Points Pittsburg & " " Cincinnati & " " Chicago & " Mississippi River Common Points Missouri " " "	.....	200	100	.....	90	.....	.....	125
July 28, 1898	New York & Common Points Pittsburg & " " Cincinnati & " " Chicago & " Mississippi River Common Points	.....	a 125	.....	.....	.....	.....	.....	.....
*October 31, 1898	New York & Common Points Pittsburg & " " Cincinnati & " " Chicago & " "	.....	.....	100*	.....	.....	.....	.....	.....
†August 2, 1899	Mississippi River Common Points Missouri River " "	.....	.....	90†	.....	.....	.....	.....	.....

a Carloads.

Statement showing Commodity Rates, from various points named below to California Terminals, supplementary to statement showing Class and Commodity Rates from New York, N. Y., etc., to Pacific Coast Terminals, as per Statement No. 1519—Continued.

Dates.	From— / To—	California terminals.							
		Structural iron, angle bars, etc. (C. L.)	Rubber boots & shoes. (L. C. L.)	Twine. (C. L.)	Electrical machinery. (C. L.)	Paint, n. o. s., in wood. (C. L.)	Soap, laundry. (C. L.)	Glauber salts. (C. L.)	Woodenware n. o. s. (C. L.)
*July 1, 1902.....	New York & Common Points.....	85*	135*	.....	125†	.....	.....	.....	.....
	Pittsburg & " "								
	Cincinnati & " "								
	Chicago & " "								
†Jany. 18, 1904.....	Mississippi River Common Points.....								
	Missouri River " "								
*January 18, 1904...	New York & Common Points.....	75†	.....	.....	140*	.....	.....	.....	135*
	Pittsburg & " "								
	Cincinnati & " "								
	Chicago & " "								
†Feby. 25, 1905.....	Mississippi River Common Points.....								
	Missouri River Common Points.....								

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COMPLAINANT'S EXHIBIT 81–G. (White.)

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION,
December 28, 1908.

Comparative statement showing changes in Eastbound Trans-Continental Freight Rates, taking effect January 1, 1909.

[Rates in cents per hundred pounds.]

From	Pacific Coast terminals.															
To—	Commodities.						Classes.									
							Governed by Western Classification.									
	Canned goods, C. L.	Coffee, green, C. L.	Dried fruit in sacks, C. L.	Nuts, C. L.	Raisins in boxes, C. L.	Hops, L. C. L.	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Rates as per previous memorandum.																
Missouri River Common Points	75	75	120	130	100	150	300	260	220	180	160	160	140	110	95	85
Mississippi " " "							320	280	230	185	165	167	148	115	100	90
Chicago & Common Points							340	300	240	190	170	175	155	120	105	95
Cincinnati, Detroit & Common Points							345	305	245	195	175	180	160	125	110	100
Pittsburg, Buffalo & Common Points							350	310	250	200	180	180	160	125	110	100
New York and Common Points							370	330	265	210	185	185	165	130	115	105
Rates January 1, 1909.																
Missouri River Common Points	85	80	130	140	110	200	300	260	220	190	165	160	125	100	100	95
Mississippi " " "							300	260	220	190	165	160	125	100	100	95
Chicago and " " "							300	260	220	190	165	160	125	100	100	95
Cincinnati, Detroit & Common Points							300	260	220	190	.....	.....	.....	.....	.....	.....
Pittsburg, Buffalo & Common Points							300	260	220	190	.....	.....	.....	.....	.....	.....
New York and Common Points							300	260	220	190	.....	.....	.....	.....	.....	.....

COMPLAINANT'S EXHIBIT 81–H. (White.)

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION,
December 28, 1908.

Comparative statement showing changes in Westbound Trans-Continental Freight Rates, taking effect January 1, 1909.

[Rates in cents per one hundred lbs.]

To.....	California coast terminals.																
	Commodities.																
From—	Dry goods, N. O. S., in cases, A. Q.	Cotton piece goods	Cast iron cook stoves, C. L.	Canned goods, C. L.	Glassware (except cut), C. L.	Starch, C. L.	Drugs, C. L.	Crockery, C. L.	Nails, C. L.	Agricultural implements (carloads), reapers, mowers, etc.	Structural iron, C. L., angle bars, etc., C. L.	Rubber boots and shoes, L.C.L.	Twine, C. L.	Electrical machinery, carloads.	Paint, N. O. S., in wood, C. L.	Soap, laundry, C. L.	Glauber salts, C. L.	Woodenware, N.O.S., C. L.
Rates as per previous memorandum.																	
New York and Common Points.....	300	a 100	135	b 100	110	100	140	95	80	125	75	135	90	140	90	75	80	135
Pittsburg and " "	300	a 100	135	100	110	100	140	95	80	125	75	135	90	140	90	75	80	135
Cincinnati and " "	300	a 100	135	100	110	100	140	95	65	125	75	135	90	140	90	75	80	135
Chicago and " "	300	a 100	125	100	110	100	140	90	65	120	75	135	90	140	90	75	80	135
Mississippi River Common Points.....	300	a 100	125	100	110	100	140	90	65	120	75	135	90	140	90	75	80	135
Missouri " " "	300	a 100	125	100	110	100	140	85	65	115	75	135	90	140	90	75	80	135
Rates January 1, 1909.																	
New York and Common Points.....	300	c 110	130	100	120	100	150	95	85	135	80	150	95	150	95	80	80	135
Pittsburg and " "																		
Cincinnati and " "	300	c 110	130	95	120	100	150	95	70	135	80	150	95	150	95	80	80	135
Chicago and " "	300	c 110	130	95	120	100	150	95	70	130	80	150	95	150	95	80	80	135
Mississippi River Common Points.....	300	c 110	130	90	120	100	150	95	70	125	80	150	95	150	95	80	80	135
Missouri River Common Points.....	300	c 110	130	90	120	100	150	95	70	125	80	150	95	150	95	80	80	135

a Applies C. L., L. C. L. $1.50 per 100 lbs.

b New York to California terminals via Galveston

c Applies C. L. L. C. L. $1.60 per 100 lbs.

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COMPLAINANT'S EXHIBIT 81-I. (White.)

(Continuation of Exhibit 81-H.)

To	Classes.									
	Governed by western classification.									
From—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Rates as per previous memorandum.										
New York and common points	300	260	220	190	165	160	125	100	100	95
Pittsburg and " "										
Cincinnati and " "										
Chicago and " "										
Mississippi River common points	300	260	220	190	165	160	125	100	100	90
Missouri River common points	300	260	220	190	160	160	125	100	95	85
Rates January 1, 1909.										
New York and common points	300	260	220	190	.....	.....	.....	.....	.....	.....
Pittsburg and " "										
Cincinnati and " "										
Chicago and common points	300	260	220	190	165	160	125	100	100	95
Mississippi River common points										
Missouri River common points										

COMPLAINANT'S EXHIBIT 81–J. (White.)

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION,
December 29, 1908.

Comparative statement showing changes in Class and Commodity Rates from San Francisco, Cal., to Portland, Oreg., February 10, 1898, to July 1, 1908 (to date).

[Rates in cents per one hundred pounds.]

Dates.	From San Francisco, Cal., to Portland, Oreg.														
	Classes governed by Western Classification.										Canned goods C. L.	Lumber.	Fruits.		Grain and grain products.
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.			Dried.	Fresh.	
February 10, 1898	51	41	31	26	18	23	23	18	18	18	10½	.....	13	23	15½
February 10, 1900	51	41	31	26	18	23	23	18	18	18	10½	.....	13	23	15½
May 4, 1901	51	41	31	26	18	23	23	18	18	18	15½	.....	15½	23	15½
September 26, 1901	51	41	36	31	18	23	23	18	18	18	15½	[a] 15½	15½	23	15½
June 10, 1904	51	41	36	31	18	23	23	18	18	18	15½	25	15½	23	15½
July 15, 1905	51	41	41	41	28	28	28	28	28	28	18	25	18	28	15½
September 25, 1905	51	41	41	41	28	28	28	28	28	28	18	25	18	28	15½
July 1, 1908, to date	51	41	41	41	28	28	28	28	28	28	18	25	18	28	[b] 15½ [c] 18

[a] Applies only as proportional rate on shipments destined beyond.
[b] Wheat and flour, November 15, 1905, still in force.
[c] Other grain and products November 15, 1905, still in force.

Southern Pacific Co.
ICC Nos. 1048, 1481, 1743, 1780,
2105, 2114, 2322, 2337,
2343, 2612, 3021, 3022,

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COMPLAINANT'S EXHIBIT 81–K. (White.)

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION,
December 29, 1908.

Comparative statement showing changes in Class and Commodity Rates, from Portland, Oreg., to San Francisco, Cal., February 10, 1898, to July 1, 1908 (to date).

[Rates in cents per 100 pounds.]

Dates.	From Portland, Oreg., to San Francisco, Cal.															
	Classes governed by Western Classification.										Canned goods, C. L.	Lumber.	Fruits.		Grain and products.	
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.			Dried.	Fresh.	Grain.	Products.
February 10, 1898	51	41	31	26	18	23	23	18	18	18	.....	[a] 3.10	26	23	18½	[d] 15½
February 10, 1900	51	41	31	26	18	23	23	18	18	18	15½	[b] 3.10	26	23	18½	15½
October 4, 1900	51	41	31	26	18	23	23	18	18	18	18	.....	26	23	18½	15½
May 4, 1901	51	41	36	31	18	23	23	18	18	18	18	[c] 25	31	23	18½	15½
September 26, 1901	51	41	36	31	25	25	25	25	25	25	25	25	31	25	[f] 20	[e] 20
June 10, 1904	51	41	41	41	28	28	28	28	28	28	28	25	41	28	20	20
July 15, 1905	51	41	41	41	28	28	28	28	28	28	28	25	41	28	20	20
September 25, 1905	51	41	41	41	28	28	28	28	28	28	28	25	41	28	20	20
July 1, 1908																

[a] Per ton, January 1, 1900.
[b] April 1, 1900.
[c] August 20, 1903, still in force.
[d] September 1, 1898.
[e] Still in force.
[f] Still in force.

Southern Pacific Co.
ICC Nos. 1048, 1481, 1743, 1780, 1671, 1216, 2105, 2114, 2115, 2322, 2337, 2961, 3021, 1301.

1460 A recess was here taken until 2 o'clock p. m.

AFTERNOON SESSION.

The witness, Frank W. White, was recalled, and his direct examination resumed as follows:

By Mr. KELLOGG:

Papers marked Complainant's Exhibits 82–A (White) to 82–L, inclusive.

Q. I show you Complainant's Exhibit 82–A to 82–L. Please state what that exhibit is.

A. It is a statement showing first and second class passenger fares from eastern points and points as far west as Pueblo, to San Francisco, Los Angeles, and Portland.

Q. By what lines?

A. Well, really I don't know much about these statements. This is passenger.

Q. All lines?

A. All lines, as far as I know.

Q. Was that made in your office?

A. It was made in the passenger division of the office.

Mr. KELLOGG. Mr. White did not personally make this passenger statement, but I believe it is understood that it may be put in as having been made in his office and checked up, and if it is found to be in any way inaccurate we will bring the man who made it and have him make the correction.

Mr. LOVETT. Yes; it may be put in with the same effect as if Mr. White testified that he made it up and it is correct.

Q. You understand this to be a statement of the passenger rate from these points in the first column, to the various destinations named in these statements, by all lines of rail, do you not?

A. Yes, sir.

Q. And this was made in the same office but by the man in charge of the passenger tariffs?

A. Yes, sir. It was made by a clerk in the passenger department; it was not made by the man in charge of the department.

1461 Q. Well, I mean in the office of the man in charge.

A. Yes, sir.

Mr. KELLOGG. I offer Complainant's Exhibits 82–A to 82–L, inclusive, in evidence.

Complainant's Exhibits 82–A to 82–L are as follows:

EXHIBITS

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Papers marked Complainant's Exhibit 83 (White).

Q. I show you Complainant's Exhibit 83, in five sheets. Will you please state what that is?

A. It is a statement showing the difference in the rates between the Mallory and the Morgan lines on the one hand and the all-rail lines on the other, from New York to San Francisco or to Pacific Coast terminals in general—I mean the California terminals—from January, 1900, to the present time.

Q. That is, you testified this morning that, generally speaking, the rates on all classes and commodities from New York and common points and certain other territory were the same——

A. Generally so.

Q. ——to California and Pacific Coast terminals, but that there were certain exceptions, certain items of commodities, did you not?

A. Yes, sir.

Q. Does this show the exceptions?

A. This shows the exceptions, yes, sir.

Q. In the commodity rates?

A. In the commodity rates.

Q. The class rates are the same?

A. The class rates are the same.

Q. And it shows, commencing with 1900, the changes down to the present time?

A. Yes, sir.

1462 Q. These were taken from the original commodity tariffs.

Mr. KELLOGG. I offer in evidence Complainant's Exhibit 83.

Complainant's Exhibit 83 is as follows:

COMPLAINANT'S EXHIBIT 83. (White.)

INTERSTATE COMMERCE COMMISSION, DIVISION OF RATES AND TRANSPORTATION.

Statement showing rates on various commodities, from New York, N. Y., to California Terminals; Morgan Line (via New Orleans), and Mallory Line (via Galveston), and other lines.

[Rates in cents per hundred pounds.]

Date.	Commodities.	Mallory and Morgan Lines. C. L.	Other Lines.
January 18, 1900.....	Acid, sulphuric, in iron drums	[b] 110	125
	" " & nitric, mixed in iron drums	[b] 110	125
	Harrow teeth	75	85
	Barley, pearl	[d] 75	80
	Beans and peas, dried, split or whole, in sacks or barrels	75	85
	Blacking, shoe, other than as provided under "dressing"	[a] 75	80
	Brass goods, O. R. wet and corrosion:		
	Brass ingots	120	125
	Plate & sheet, completely boxed	115	125
	Rods, completely boxed	115	125
	Butchers' blocks, O. R. B	[d] 75	80
	Candles and wax tapers	[d] 95	100
	Canned goods: Fish, fruits (not preserved), meats (including potted or deviled), vegetables, soups, breads and puddings, in hermetically-sealed cans, boxed, O. R. weather	95	100
	Canned corn, straight C. L	[c] 90	95
	Canned fish	90	95
	Canned meats (including potted or deviled), straight carloads	90	95
	Cement, building or paving	75	80
	Flake, malt, in sacks	80	.....
	Composition, for roofing	75	85
	Conduits, underground, for electric wires: Stone, clay, or cement, O. R. B	75	80
	Copper goods, O. R., wet and corrosion:		
	Bar & ingot and cast plate	[d] 120	125
	Bronze ingots	[d] 120	125
	Plate & sheet, N. O. S., completely boxed	115	125
	Rods, completely boxed	115	125
	Copperas or sulphate of iron, in pkgs	60	75
	Drums (iron), for liquid asphalt, empty, returned	[d] 50	.....
	Ferromanganese, in packages	50	75
	Fertilizer, including dried blood, in packages	60	.....
	Glucose, in bbls, O. R. L., released, in straight C. L	75	85
	Grease, axle (including mineral or petroleum axle grease) in packages	[d] 75	85
	Grease, petrolatum, in packages	75	85
	Grindstones, mounted or unmounted, O. R. B	75	100
	Gum gambier, in packages	[b] 70	75
	Iron & steel articles, O. R., wet and rust:		
	Billets, blooms, ingots, muck bar, and scrap steel	50	75
	Pig iron	50	75
	Sheet No. 17 & lighter (black), not bent or punched, released	80	85
	Sheet and plate (galvanized), not bent or punched, released	[d] 80	85
	Sheet, planished or polished sheet steel (imitation planished), in pkgs., released	[d] 95	100
	Sheet, punched for rivets, in crates or bundles, strapped, or in boxes, released	[g] 80	58

[See footnotes at end of exhibit.]

Statement showing rates on various commodities, from New York, N. Y., etc.—Continued.

Date.	Commodities.	Mallory and Morgan Lines. C. L.	Other Lines.
January 18, 1900	Lithosite cement, in packages	b 75	80
	Milk, condensed, in hermetically sealed cans, boxed, O. R. weather	d 90	95
	Mince meat, in pails or tubs, when pkd. in boxes or bbls.; in kits or kegs, in glass or in paper boxes, boxed; in bulk, in bbls., or half barrels	90	95
	Nails and spikes, cut or wire, N. O. S. in boxes or kegs	60	75
	Nails, cement coated, in boxes or kegs	60	75
	Paraffine wax	d 95	100
	Plaster, land and adamantine	70	75
	Pulp wood	65	75
	Rags, compressed in bales	b 75	.....
	Railway supplies, for steam or street rys: Car wheels and axles	d 60	75
	Rails and ties, iron or steel, including fastenings, viz: Splices, tie plates, track bolts and washers	60	75
	Resin, in bbls	50	75
	Rice, in pkgs. straight C. L	60	75
	Sad irons, in boxes or barrels	b 95	100
	Sand, sand facing and fire sand	d 75	80
	Sash weights and balance weights, for folding beds and lounges	b 70	75
	Seed, mustard, in packages	h 75	100
	Sheep dip (liquid) O. R. L	60	75
	Ship chandlery, as follows: Pitch and tar	50	75
	Treenails, in crates or bundles	d 75	80
	Shoes, rings, tires or dies (for quartz mills), also cams and tappets, iron or steel	d 70	75
	Sledges and wedges, iron or steel, in boxes, barrels or crates	d 70	75
	Soda ash and soda carbonating compounds (may be shipped in sacks), caustic soda (O. R. sifting, wet and injury caused by corrosion), and hypo-sulphate, hypo-sulphite, nitrate (may be shipped in sacks), silicate and sulphate of soda, in pkgs., boxes or iron drums	50	75
	Tin and articles of tin, in boxes, bbls., or crates; tin plate, in bxs., fully released against wet, rust and damage to tin or pkgs	b 50	75
	Wire and wire goods, O. R. wet and rust, wire (fence), barbed, including staples, steel stay guards, and stretchers	60	75
	Wire, iron, plain, galvanized, tinned or coppered (including, if desired, steel stay guards)	60	75
December 3, 1900	Brick, enameled	75	105
December 15, 1900	Pipe, cast-iron, including connections	i 50	75
January 21, 1901	Barytes	j 60	85
January 28, 1901	Mattresses, metallic, wire cots, wire & spring beds and bottoms and canvas cots	b 100	100
April 18, 1901	Sledges, wedge and mauls, iron or steel, in boxes, bbls., or crates	d 70	75
May 25, 1901	Sash weights	b 60	.....
November 11, 1901	Barytes	55	85
July 1, 1902	Barrel stock, viz: Sugar, flour and lime barrel stock	d 70	75
	Brick, common or pressed, in pkgs	70	75
	Cement (tar), building or paving, in pkgs	50	75
	Barley malt, in pkgs	65	.....
	Brewers grain or refuse, dry, in pkgs	75	.....
	Pop corn, in pkgs	90	.....
	Food, poultry, made from ground bones, grits, etc., in sacks	60	.....
	Insulators, terra cotta or clay (for use in buildings for protection against fire), boxed, crated, or in barrels	k 75	80
	Washers, iron or steel, straight C. L	60	75
	Mining cars, or parts thereof, K. D. loaded on standard gauge cars	h 125	.....
	Oil, castor, cocoanut, corn rubber, cotton-seed, rape seed, dead, kalon, lard, linseed, neatsfoot, red, rosin or "Y," and tallow, in cans, boxed or in barrels	n 78½	.....
	Oil, lucol, in barrels, O. R. L	n 78½	.....
	Terra cotta, building, O. R. B	75	80
	Tin can tops, packed solid in boxes	65	.....
	Tin and terne plate, in boxes, fully released against wet, rust and damage to packages or contents	50	75

[See footnotes at end of exhibit.]

Statement showing rates on various commodities, from New York, N. Y., etc.—Continued.

Date.	Commodities.	Mallory and Morgan Lines. C. L.	Other Lines.
August 11, 1902	Brick, common or pressed, ornamental figured shaped, invoiced value not to exceed $5.00 per ton	70	75
October 6, 1902	Iron or steel, corrugated, N. O. S	o 80	85
January 23, 1903	Canned fish, canned clam juice, and canned clam chowder	90	95
October 6, 1902	Brick, enameled	h 65	.....
	Brick, common or pressed, ornamental figured shaped, invoice value not to exceed $5.00 per ton	50	75
January 23, 1903	Lime, acetate of, in barrels, boxes, casks, or iron drums	h 75	.....
February 23, 1903	Iron or steel: Sheet No. 12 and lighter (black or galvanized, but exclusive of planished or Russia) not bent or punched, corrugated N. O. S., including ridge rolls straight or mixed C. L	d 80	85
	Nails and spikes (not including R. R. spikes) cut or wire, N. O. S., in boxes or kegs & wire (fence) iron or steel; smooth annealed No. 12 or heavier, plain or galvanized; barbed galvanized or painted; staples, straight or mixed C. L	60	75
March 4, 1903	R. R. spikes	60	75
April 20, 1903	Shingle bands, iron or wire, in crates or bundles	65	75
July 31, 1903	Fire brick and fire clay	50	75
October 12, 1903	Calcium, chloride of, in iron drums	50	75
	Ties, baling	65	75
May 19, 1903	Stone, rough, sawed, or cut to dimension, not polished	60	.....
November 16, 1903	Silex, in packages	60	.....
January 18, 1904	Canned beans and peas, straight C. L	90	95
	Canned corn, boxed " "	90	95
	Brewers grain or refuse, dry in pkgs	85	.....
	Flake, malt	p 85	.....
	Pop corn, in packages	100	.....
	Oil, creosote or tar, in bbls. or cans bxd	q 50	75
	Food, poultry, made from ground bones, grits, etc. in sacks	65	.....
January 18, 1904	Furniture, viz: Sideboards, buffets, combination buffets and sidet oards and chiffoniers, net cost of each piece not to exceed $16	160	175
	Structural iron, viz: Angles, channels, beams, etc	r 75	85
	Bridge and wharf material viz: Iron or steel beams, columns, girders, etc	r 75	85
	Tank or reservoir material, viz: Beams, columns and circular frames for tops	75	85
	Washers, straight C. L	65	80
	Steel rails, per ton 2,240 lbs	$10.00	80 per 100 lbs.
	Fastenings, per ton 2,000 lbs	10.00	80 " " "
October 12, 1905	Phosphate rock	60	.....
February 8, 1904	Nails and spikes (not including R. R. spikes), cut or wire, N. O. S. in boxes or kegs, and wire (fence) iron or steel; smooth annealed No. 12 or heavier, plain or galvanized; barbed galvanized or painted; staples, straight or mixed C. L	65	80
	Nails, cement coated, in boxes or kegs	65	80
	Oxide of iron	s 60	.....
	Rails (including mining rails) and ties, iron or steel, including fastenings, viz: splices, R. R. spikes, tie plates, track bolts and washers	t 65	80
	Sash weights and balance weights, for folding beds and lounges	50	75
	Silica (pulverized) or silex	50	75
	Stoves (cast iron), cooking, heating, etc	125	135
	Syrup (corn, glucose, maple or rock candy) and molasses	75	90
	Tin and terne plate, in boxes, fully released against wet, rust and damage to package or contents	u 55	75
	Wire (fence), barbed, including staples, steel stay guards & stretchers	65	80
	Wire, iron, plain, galvanized, etc	65	80
	Rice polish (rice dust)	60	75

[See footnotes at end of exhibit.]

Statement showing rates on various commodities, from New York, N. Y., etc.—Continued.

Date.	Commodities.	Mallory and Morgan Lines. C. L.	Other Lines.
May 9, 1904	Rice, brewers	60	75
July 16, 1904	Cotton seed oil	[r] 90	
November 5, 1904	Barytes	50	
	Feed, poultry, made from ground bones, grits, etc., in sacks	60	
	Copper, sulphate of (bluestone)	60	75
	Limestone (ground)	50	
August 8, 1904	Car wheels and axles	60	75
March 15, 1905	Rice polish (rice dust), rice bran or rice hulls	60	75
June 24, 1905	Sand moulding	50	
August 19, 1905	Strawboard, in crates or bundles	[w] 50	
Sept. 21, 1905	Tile, roofing	70	80
January 15, 1906	Rags, in pkgs. (will not apply in connection with New York & Texas S. S. Co.)	[x] 60	
February 12, 1906	Rice flour	70	
" 27, "	Asphaltum	50	
August 10, 1906	Limestone & whiting, ground or lump	50	
" 27, "	Cement work, for building purposes (not including statuary or figures)	75	80
	Grape sugar	75	85
" 28, "	Strawboard, in crates or bundles	50	
November 30, 1906	Cement, in pkgs	45	
April 3, 1907	Carbon, clinker	77½	
March 16, 1908	Hemp, sisal, istle or ixtle	60	75
April 30, 1908	Flaxseed, whole or ground, in packages	120	125
May 16, 1908	Ore, iron, ground	60	

[a] Withdrawn November 12, 1900.
[b] Withdrawn July 1, 1902.
[c] Withdrawn April 20, 1903.
[d] Withdrawn January 18, 1904.
[e] Withdrawn April 25, 1901.
[h] Withdrawn October 12, 1903.
[i] Withdrawn March 10, 1903.
[j] Withdrawn November 11, 1901.
[k] Withdrawn September 21, 1905.
[n] Withdrawn May 29, 1907.
[o] Withdrawn February 23, 1903.
[p] Withdrawn July 16, 1904.
[q] Withdrawn August 8, 1904.
[r] Withdrawn February 25, 1905.
[s] Withdrawn June 30, 1905.
[t] Withdrawn November 25, 1905.
[u] Withdrawn November 20, 1905.
[v] Withdrawn May 29, 1907.
[w] Withdrawn August 27, 1906.
[x] Withdrawn March 5, 1906.

Paper marked Complainant's Exhibit 84 (White).

Q. I show you Complainant's Exhibit 84, in three sheets. What does that show?

A. That continues it down to the present time, showing the changes in effect on January 1, 1909.

Q. That is, it continues Complainant's Exhibit 83 down to the present time, showing the changes made by the tariff which took effect January 1, 1909?

A. Yes, sir.

Q. How many items of commodity are there in this Exhibit 83, the rates on which on January 18, 1900, were less by the Mallory line and the Morgan line to New Orleans and Galveston and from those places by rail to the California terminals than by the all-rail lines?

A. Approximately 65 up till 1901.

Q. Now, since 1901, as shown by Exhibit 84, how many of those items have been changed until they are now the same?

A. There are about twenty left in which the rates for the Morgan line are lower than they are for the all-rail line.

Q. I suppose that is out of many hundred items?

A. Yes.

Q. You have no idea how many hundred items?

A. No, sir, I could not tell you.

Mr. KELLOGG. I offer Complainant's Exhibit 84 in evidence. Complainant's Exhibit 84 is as follows:

COMPLAINANT'S EXHIBIT 84. (White.)

INTERSTATE COMMERCE COMMISSION,
DIVISION OF RATES AND TRANSPORTATION,
December 29, 1908.

Statement showing rates on various commodities, from New York, N. Y., to California Terminals; Morgan Line (via New Orleans) and Mallory Line (via Galveston), and other lines, in effect prior to January 1, 1909, and in effect January 1, 1909.

[Rates in cents per one hundred pounds.]

Commodities.	Morgan and Mallory Lines.		Other Lines.	
	Prior to Jany. 1, 1909.	In effect Jany. 1, 1909.	Prior to Jany. 1, 1909.	In effect Jany. 1, 1909.
Harrow teeth	75	85	85	85
Barley, pearl	80	90	80	90
Beans and peas, dried, split or whole, in sacks or bbls.	75	75	85	75
Brass goods, O. R., wet and corrosion:				
Brass ingots	120	125	125	125
Plate and sheet, completely boxed	115	125	125	125
Rods, completely boxed	115	125	125	125
Butchers' blocks, O. R. B	80	85	80	85
Candles and wax tapers	100	100	100	100
Canned goods: Fish, fruits (not preserved), meats (including potted or deviled), vegetables, soups, breads and puddings, in hermetically sealed cans, boxed, O. R. weather	95	95	100	100
Composition, for roofing	75	75	85	75
Conduits, underground, for electric wires: Stone, clay, or cement, O. R. B	75	75	80	80
Copper goods, O. R., wet and corrosion:				
Bar and ingot and cast plate	125	125	125	125
Bronze ingots	125	125	125	125
Plate and sheet, N. O. S., completely boxed	115	125	125	125
Rods, completely boxed	115	125	125	125
Copperas, or sulphate of iron, in packages	60	75	75	75
Ferro-manganese, in packages	50	50	.....	.....
Fertilizer, including dried blood, in packages	60	60	.....	.....
Glucose, in bbls., O. R. L., released in straight carloads	75	75	85	75
Grease, axle (including mineral or petroleum axle grease), in packages	85	100	85	100
Grease, petroleum, in packages	75	100	85	100
Grindstones, mounted or unmounted, O. R. B	75	80	100	80
Milk, condensed, in hermetically sealed cans, boxed, O. R. weather	95	85	95	85
Mince meat, in pails or tubs, when packed in boxes or barrels; in kits or kegs, in glass or in paper boxes, boxed; in bulk, in barrels or half barrels	90	90	95	90
Paraffin wax	100	100	100	100
Plaster, land	70	75	75	75
Pulp wood	65	75	75	75
Resin, in barrels	50	55	75	.....
Rice, in packages, straight carloads	60	65	75	.....
Sad irons, in boxes or barrels	100	85	100	85
Sand, sand facing, and fire sand	80	50	80	.....
Seed, mustard, in packages	100	120	100	125
Sheep dip (liquid), O. R. L	60	65	75	.....
Ship chandlery, pitch and tar	50	55	75	.....
Treenails, in crates or bundles	80	85	80	85
Shoes, rings, tires, or dies (for quartz mills), also cams and tappets, iron or steel	75	90	75	90
Soda ash and soda carbonating compounds (may be shipped in sacks), caustic soda (O. R. sifting, wet and injury caused by corrosion), and hypo-sulphate (hypo-sulphite), nitrate (may be shipped in sacks), silicate and sulphate of soda, in packages, boxes, or iron drums	50	55	75	.....
Pipe, cast-iron, including connections	75	65	75	65

Statement showing rates on various commodities, from New York, N. Y., etc.—Continued.

Commodities.	Morgan and Mallory Lines.		Other Lines.	
	Prior to Jany. 1, 1909.	In effect Jany. 1, 1909.	Prior to Jany. 1, 1909.	In effect Jany. 1, 1909.
Mattresses, metallic, wire cots, wire and spring beds and bottoms, and canvas cots	100	110	100	110
Sledges, wedges, and mauls, iron or steel, in boxes, bbls., or crates	75	85	75	85
Insulators, terra cotta or clay (for use in buildings for protection against fire), boxed, crated, or in bbls	80	90	80	90
Mining cars, or parts thereof, K. D. loaded on standard-gauge cars	.....	140	.....	140
Oil, castor, cocoanut, corn, rubber, cotton seed, rape seed, dead, kalon, lard, linseed, neat's-foot, red, resin or "Y," and tallow, in cans, boxed or in bbls	.....	100	.....	100
Oil, lucol, in barrels, O. R. L	.....	100	.....	100
Terra cotta, building, O. R. B	75	75	80	80
Tin-can tops, packed solid in boxes	65	85	.....	85
Canned fish, canned clam juice and canned clam chowder	90	90	95	95
Lime, acetate of, in barrels, boxes, casks, or iron drums	.....	75	.....	75
Iron or steel: Sheet No. 12 and lighter (black or galvanized, but exclusive of planished or Russia), not beat or punched, corrugated N. O. S., including ridge rolls, straight or mixed C. L	85	95	85	95
Railroad spikes	60	[a] $11.00	75	.....
Shingle bands, iron or wire, in crates or bundles	65	80	75	80
Fire brick and fire clay	50	50	75	.....
Calcium, chloride of, in iron drums	50	75	75	75
Ties, baling	65	80	75	80
Stone, rough, sawed or cut to dimension, not polished	60	55	.....	.....
Silex, in packages	60	75	.....	75
Canned beans and peas, straight carloads	90	90	95	95
Canned corn, boxed, straight carloads	90	90	95	95
Pop corn, in packages	100	100	.....	100
Oil, creosote or tar, in bbls. or cans, boxed	75	55	75	.....
Furniture, viz: Sideboards, buffets, combination buffets and sideboards and chiffoniers, net cost of each piece not to exceed $16.00	160	175	175	175
Structural iron, viz:				
Angles, channels, beams, etc	85	80	85	80
Bridge and wharf material, viz: Iron or steel beams, columns, girders, etc	85	80	85	80
Tank or reservoir material, viz: Beams, columns, and circular frames for tops	75	80	85	80
Washers, straight carloads	65	80	80	80
Steel rails, per ton 2,240 lbs	$10.00	11.00	[b] 80	.....
Fastenings, " " 2,000 "	10.00	11.00	[b] 80	.....
Phosphate rock	60	60	.....	.....
Nails and spikes (not including R. R. spikes), cut or wire N. O. S., in boxes or kegs, and wire (fence) iron or steel; smooth annealed No. 12 or heavier, plain or galvanized; barbed galvanized or painted; staples, straight or mixed C. L	65	70	80	85
Nails, cement coated, in boxes or kegs	65	70	80	85
Rails (including mining rails) and ties, iron or steel, including fastenings, viz: splices, R. R. spikes, tie plates, track bolts, and washers	80	[c] $11.00	80	.....
Sash weights and balance weights, for folding beds and lounges	50	50	75	.....
Silica (pulverized) or silex	50	75	75	75
Stoves (cast iron), cooking, heating, etc	125	130	135	130
Syrup (corn, glucose, maple, or rock candy) and molasses	75	75	90	75
Tin and terne plate, in boxes, fully released against wet, rust and damage to package or contents	75	55	75	.....
Wire (fence), barbed, including staples, steel stay guards, and stretchers	65	70	80	85
Wire, iron, plain, galvanized, etc	65	70	80	85
Rice, brewers'	60	65	75	.....
Cotton seed oil	.....	[d] 100	.....	[d] 100
Barytes	50	50	.....	.....
Feed, poultry, made from ground bones, grits, etc., in sacks	60	60	.....	.....

[a] Per ton 2,000 lbs.
[b] Per 100 lbs.
[c] Per ton 2,240 lbs.
[d] Does not apply on tank cars.

COMPLAINANT'S EXHIBIT 86. (White.)

Tariff No. A-15979. I. C. C. No. J-1459.

ILLINOIS CENTRAL RAILROAD COMPANY

AND

UNION PACIFIC RAILROAD COMPANY

JOINT FREIGHT TARIFF.

Issued Nov. 22nd, 1905. Effective Nov. 22nd, 1905.

Expires with shipment

FROM

ANTWERP, BELGIUM
(ex S. S. "Oxonian")

TO

SAN FRANCISCO, CALIF.
Via Co. Bluffs and U. P. R. R.

ON

100 c/s CHAMPAGNE

Per 100 lbs.

$1.50

(This includes cost of handling from shipside to cars.)

F. B. BOWES, F. T. M.,
Chicago, Ill.

T. J. HUDSON, G. T. M.,
Chicago, Ill.

HENRY BALDWIN, F. F. A.,
New Orleans, La.

Issued by:
W. M. RHETT, G. F. A.,
Chicago, Ill.

ICC JWC RH Agt Co. Bluffs TJH ACH EHWood (038).

COMPLAINANT'S EXHIBIT 87. (White.)

ILLINOIS CENTRAL RAILROAD COMPANY.

Tariff No. A-14324. I. C. C. No. J-405.

JOINT FREIGHT TARIFF.

Issued May 4th, 1905. Effective May 4th, 1905.

Expires with shipment.

FROM

BORDEAUX, FRANCE
(ex S. S. "Mexican")

TO

SAN FRANCISCO, CAL.
Via Council Bluffs and Union Pacific

ON

50 cases WINE

Per 100 lbs.

$1.50

(This includes cost of handling from shipside to cars.)

F. B. BOWES, A. T. M.,
Chicago, Ill.

T. J. HUDSON, T. M.,
Chicago, Ill.

HENRY BALDWIN, F. F. A.,
New Orleans, La.

Issued by:
W. M. RHETT, G. F. A.,
Chicago, Ill.

ICC-JWC-MDR-TJH-AGH-Agent Co. Bluffs, EHWood, GFA,
Omaha, Neb.

COMPLAINANT'S EXHIBIT 88. (White.)

Tariff No. A–16444. I. C. C. No. J–2024.

ILLINOIS CENTRAL RAILROAD COMPANY

AND

UNION PACIFIC RAILROAD COMPANY

JOINT FREIGHT TARIFF.

Issued Feb. 19, 1906. Effective Feb. 19, 1906.

Expires with shipment.

FROM

ANTWERP, BELGIUM
(ex S. S. "Asian")

TO

SAN FRANCISCO, CALIF.
Via Co. Bluffs and U. P. R. R.

On	Per 100 lbs.
180 Cases Mineral Water	80c.
580 Cases Window Glass	80

(This includes cost of handling from shipside to cars.)

F. B. BOWES, F. T. M.,
Chicago, Ill.

HENRY BALDWIN, F. F. A.,
New Orleans, La.

T. J. HUDSON, G. T. M.,
Chicago, Ill.

Issued by:
W. M. RHETT, G. F. A.,
Chicago, Ill.

ICC JWC JFS RH Agt Co. Bluffs TJH AGH EHWood, GFA, Omaha (038).

COMPLAINANT'S EXHIBIT 89. (White.)

Tariff No. A-17071. I. C. C. No. J-2151.

ILLINOIS CENTRAL RAILROAD COMPANY

AND

UNION PACIFIC RAILROAD COMPANY

JOINT FREIGHT TARIFF.

Issued March 9th, 1906. Effective March 10th, 1906.

Expires with Shipment.

FROM

ANTWERP, BELGIUM

(ex S. S. "Michigan")

TO

SAN FRANCISCO, CALIF.

Via Co. Bluffs and U. P. R. R.

ON

238 Cases Mineral Water

Per 100 Lbs.

80 c.

(This includes cost of handling from shipside to cars.)

F. B. BOWES, F. T. M., Chicago, Ill.

HENRY BALDWIN, F. F. A., New Orleans, La.

T. J. HUDSON, G. T. M., Chicago, Ill.

Issued by:
W. M. RHETT, G. F. A., Chicago, Ill.

ICC JWC JFS RK Agt Co. Bluffs TJH AGH EHW (038).

COMPLAINANT'S EXHIBIT 90. (White.)

Tariff No. A–18801. I. C. C. No. J.–4181.

ILLINOIS CENTRAL RAILROAD COMPANY

AND

UNION PACIFIC RAILROAD CO.

OREGON SHORT LINE R. R.

JOINT FREIGHT TARIFF.

Issued Sept. 17th, 1906. Effective Sept. 17th, 1906.

Expires with shipment.

FROM

ANTWERP, BELGIUM

(ex S. S. "Kingstonian")

To	On		Per 100 Lbs.
Pueblo, Col.	18 cases	Window Glass	90c
Denver, Col.	2 cases	Crockery	$1.09
San Francisco, Cal.	480 cases	Window Glass	.80
Salt Lake City, Utah	2 cases	Toys	2.80
Do.	4 "	Crockery	2.00

Via Council Bluffs and U. P. R. R.

Issued by
W. M. RHETT, G. F. A.,
Chicago, Ill.

T. J. HUDSON, G. T. M.,
Chicago, Ill.

HENRY BALDWIN, F. F. A.,
New Orleans, La.

F. B. BOWES, FTM,
Chicago, Ill.

ICC–JWC–JFS–AGH–RK Agent Council Bluffs, E. H. Wood, J. A. Reeves, 12 copies. (0–38–Antwerp.)

COMPLAINANT'S EXHIBIT 91. (White.)

Tariff No. A–19099. I. C. C. No. J–4579.

ILLINOIS CENTRAL RAILROAD COMPANY

UNION PACIFIC RAILROAD COMPANY

AND

SOUTHERN RAILWAY COMPANY

JOINT FREIGHT TARIFF.

Issued Nov. 5, 1906. Effective Nov. 6, 1906.

Expires with Shipment.

FROM

ANTWERP, BELGIUM,
(ex S. S. "Michigan")

To	On	Per 100 lbs.
Oakland, Cal.	180 cases Wash Blue	98c.
San Francisco, Cal.	459 cases Window Glass	80

Via Council Bluffs, Ia. U. P. & S. P.

Issued by:
W. M. RHETT, G. F. A.,
Chicago.

T. J. HUDSON, G. T. M.,
Chicago.

HENRY BALDWIN, F. F. A.,
New Orleans, La.

F. B. BOWES, F. T. M.,
Chicago.

ICC JWC JFS RK Agt. Council Bluffs, Ia. AGH CCC EHWood GWLuce, GFA, San Fran. Cal.

(038) 25

COMPLAINANT'S EXHIBIT 92. (White.)

Tariff No. A–19327—Corrected. I. C. C. No. J–4807—Corrected.

ILLINOIS CENTRAL RAILROAD COMPANY

UNION PACIFIC R. R. CO.

AND

SOUTHERN PACIFIC RAILROAD CO.

JOINT FREIGHT TARIFF.

Issued Dec. 29, 1906. Effective Dec. 31, 1906.

Expires with Shipment.

FROM

HAMBURG, GERMANY,
(ex S. S. "Manchester Spinner")

TO

SAN FRANCISCO, CALIF.
Via Council Bluffs, Ia. U. P. and S. P. R. R.

ON

400 Bdls. RATTAN

Per 100 lbs.
$1.31

Issued by:

W. M. RHETT, G. F. A.,
Chicago, Ill.

T. J. HUDSON, G. T. M.,
Chicago.

F. B. BOWES, F. T. M.,
Chicago.

DONALD ROSE, G. E. A.,
London, Eng.

HENRY BALDWIN, F. F. A.,
New Orleans, La.

ICC JWC JFS RK Agt. Co. Bluffs, Ia. AGH CCC EHW GWL (038)

COMPLAINANT'S EXHIBIT 93. (White.)

Tariff No. 19327. I. C. C. No. J-4807.

ILLINOIS CENTRAL RAILROAD COMPANY

UNION PACIFIC RAILROAD COMPANY

AND

SAN PEDRO, LOS ANGELES AND SALT LAKE R. R. CO.

JOINT FREIGHT TARIFF.

Issued Dec. 29, 1906. Effective Dec. 31, 1906.

Expires with Shipment.

FROM

HAMBURG, GERMANY,
(ex S. S. "Manchester Spinner")

TO

SAN FRANCISCO, CALIF.
Via Council Bluffs, Ia., U. P. and S. P. L. A. & S. L.

ON

400 Bdls. RATTAN

Per 100 lbs.
$1.31

Issued by:
W. M. RHETT, G. F. A.,
Chicago.

T. J. HUDSON, G. T. M.,
Chicago.
F. B. BOWES, F. T. M.,
Chicago.

HENRY BALDWIN, F. F. A.,
New Orleans, La.
DONALD ROSE, G. E. A.,
London, Eng.

ICC JWC JFS RK Agt. Co. Bluffs, Ia.

COMPLAINANT'S EXHIBIT 94. (White)

Tariff No. A–17463. I. C. C. No. J–2543.

ILLINOIS CENTRAL RAILROAD COMPANY

AND

UNION PACIFIC RAILROAD COMPANY.

FROM

LONDON, ENGLAND,
(ex S. S. "Asian")

To	On	Per 100 lbs.
Salt Lake City, Utah.	250 Pkgs. Beer	91c.
Denver, Colo.	275 Pkgs. Beer	69
San Francisco, Cal.	58 Cases Tea	190

Via Council Bluffs and U. P. R. R.

F. B. BOWES, F. T. M.,
Chicago, Ill.

Henry BALDWIN, F. F. A.,
New Orleans, La.

T. J. HUDSON, G. T. M.,
Chicago, Ill.

Issued by:
W. M. RHETT, G. F. A.,
Chicago, Ill.

ICC JWC JFS RK Agt. Co. Bluffs TJH AHG EHWood, GFA, Omaha. (038) 20

COMPLAINANT'S EXHIBIT 95. (White.)

Tariff No. B–14164
Cancels No. A–14164.

I. C. C. No. J–1960
Cancels I. C. C. No. J–255.

ILLINOIS CENTRAL RAILROAD COMPANY,

Atchison, Topeka & Sante Fe Ry.
Chicago, Burlington & Quincy Ry.
Chicago, Milwaukee & St. Paul Ry.
Chicago & Northwestern Ry.
Great Northern Railway Co.
Minneapolis & St. Louis R. R.
Oregon R. R. & Navigation Co.
Northern Pacific Railroad
Oregon Short Line
St. Louis & San Francisco R. R.
Southern Pacific Ry. Co.
Union Pacific R. R. Co.

JOINT FREIGHT TARIFF.

FROM

PROGRESO, YUCATAN,

TO

San Francisco, Cal.
Seattle, Washington.
Portland, Oregon.
Tacoma, Wash.

Applying on.	Per 100 pounds.
SISAL, IXTLE or ISTLE, C. L., (minimum weight 24,000 lbs.)	70 cents.

Issued March 15, 1906.

Taking Effect March 15, 1906.

F. B. BOWES,
F. T. M., Chicago

HENRY BALDWIN,
F. F. A., New Orleans, La.

T. J. HUDSON,
G. T. M., Chicago

Issued by:
W. M. RHETT,
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(File P–35–T.)

Div. Sheet A–5056.

COMPLAINANT'S EXHIBIT 96. (White.)

Tariff No. C–14164
Cancels Tariff No. B–14164.

I. C. C. No. J–2436
Cancels I. C. C. No. J–1960.

ILLINOIS CENTRAL RAILROAD COMPANY.

Atchison, Topeka & Santa Fe Ry.
Chicago, Burlington & Quincy Ry.
Chicago, Milwaukee & St. Paul Ry.
Chicago & Northwestern Ry.
Canadian Pacific Ry.
Great Northern Ry.
Minneapolis & St. Louis R. R.
Oregon R. R. & Navigation Co.
M'pls. St. Paul & S. S. Marie Ry.
Northern Pacific Ry.
Oregon Short Line
St. Louis & San Francisco R. R.
Southern Pacific Railway
Union Pacific R. R.

JOINT FREIGHT TARIFF.

FROM

PROGRESO, YUCATAN,

TO

San Francisco, Cal.
Seattle, Wash.
Portland, Oregon
Tacoma, Wash.

APPLYING ON	Per 100 Lbs.
SISAL, IXTLE or ISTLE, C. L. (Minimum Weight 24,000 lbs.)	70 cts.

Issued May 3, 1906.

Taking Effect May 4, 1906.

F. B. BOWES,
F. T. M., Chicago, Ill.
T. J. HUDSON,
G. T. M., Chicago, Ill.

HENRY BALDWIN,
F. F. A., New Orleans, La.
Issued by:
W. M. RHETT,
G. F. A., Chicago, Ill.

(File P 35 T.)

Div. Sheet A 5056

MAPS

TOO

LARGE

FOR

FILMING

Q. Will you make and put in as a part of your testimony a map showing what is included in New York common points, Pittsburg and Buffalo common points, Cincinnati and Detroit common points, Chicago and common points, Mississippi River common points, Missouri River common points, such map to be marked Complainant's Exhibit 97.

A. I will endeavor to obtain such a map, and if I can not obtain it I will make one the best I can.

1464 Complainant's Exhibit number 97 is reserved for the map to be produced by the witness.

Complainant's Exhibit 97 was subsequently produced and offered in evidence by Mr. Severance, and faces this page.

Cross-examination by Mr. LOVETT:

Q. I suppose the purpose of preparing these statements when introduced was to show that the rates during all this period covered by the statements from New York and common points to Pacific Coast points by all lines, were the same, with few exceptions?

A. Yes, sir. I don't know what the purpose of it was.

Q. That is the result of the statements, isn't it?

A. That appears to be the result of the statements; yes, sir.

Q. As you understand the statements, that is the result of them?

A. Yes, sir.

Q. Is that unusual in railroad tariffs, Mr. White?

A. Why, I don't know that I ever made a statement before of such magnitude as that.

Q. Well, that doesn't quite answer the question. I asked whether that situation was at all unusual in railroad tariffs.

A. No; to points that are reached by the same road, the consequence is the rates have to be approximately alike.

Q. Where railroads furnish anything like equal service between the same points and observe published rates, that is absolutely necessary, isn't it, in the business?

A. I should think so.

Q. I think you said you are in charge of the tariff files of the Commission?

A. No, sir; I am not; I am a clerk there.

Q. You are a clerk there?

A. Yes, sir.

Q. You have access to all the tariffs, haven't you?

1465 A. Yes, sir.

Q. Were the rates during this same period the same from New York and Chicago, for example, by all rail lines?

A. If I understand you rightly, you asked if the rates between New York and Chicago were the same during that time by all lines?

Q. Between New York and Chicago.

A. Yes, sir; except the so-called differential lines. During the summer, of course, where lake traffic is taken into consideration, there are lower rates that way; but the rates by the all-rail lines, the standard lines, are the same.

Q. That is, all of the rail lines between New York and Chicago have precisely the same rates, haven't they?

A. The standard lines have, yes, sir.

Q. Do not all railroad lines extending from New York?

A. Yes; all rail lines extending from New York.

Q. Do not all the rail lines between New York and St. Louis have the same rates?

A. As far as I know; yes.

Q. And between New York and all Missouri River points?

A. Those rates are made on a combination of the river, I believe.

Q. The rates are the same by all-rail lines, aren't they?

A. The rates are the same; yes, sir.

Q. You would not consider, then, the circumstance that the rates are the same via the all-rail lines from the Atlantic seaboard to the Pacific coast, and by the Sunset and the Mallory line and its
1466 connections, at all exceptional, or significant, or anything in particular, would you?

A. Well, if my opinion amounts to anything, I would not. I am not a traffic man, and therefore I am not able to give testimony on that point.

Q. What I am trying to show, Mr. White, is that the result of these statements with respect to rates from New York and common points to the Pacific coast is not in any respect exceptional.

A. It would not appear so, no, sir.

Q. Isn't it true, Mr. White, that from the Atlantic seaboard to all Mississippi and Missouri River crossings, to Colorado points, Utah points, Montana points, and indeed universally, as a rule, under the Interstate Commerce Act, where rates are filed under the Interstate Commerce Act, that the rates are the same via all lines except where agreed differentials are shown by the tariffs?

A. As far as I know, yes, sir.

1467 CHARLES WHITNEY THROCKMORTON,

being duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Throckmorton, where do you live?

A. Morristown, New Jersey.

Q. And where do you do business?

A. 346 Broadway, New York.

Q. What is your business at present?

A. Stock broker.

Q. How long have you been a stock broker?

A. Since March, 1905.

Q. Previous to that time what was your business?

A. I was traffic manager of the National Wholesale Lumber Dealers' Association.

Q. For how long a time did you occupy that position?

A. From the latter part of September, 1904.

Q. Previous to that what was your business?

A. I was with the Southern Pacific Company.

Q. Where?

A. 349 Broadway, New York City.

Q. When did you go with the Southern Pacific Company?

A. March, 1892.

Q. And in what capacity did you work for the Southern Pacific Company?

A. In various capacities. I started in there as a boy in the Claim Department; then I was in the Bill of Lading Department, and finally in the Soliciting Department of the road, the Traffic Department.

Q. How long were you in the Soliciting Department?

A. I think I was there about seven years.

1468 Q. That is, seven years prior to 1904?

A. Yes, sir; possibly a little longer; I don't remember the exact date.

Q. What were your duties when you were in the Soliciting Department? What did you do?

A. To get freight.

Q. How did you go to work to get it?

A. By personal solicitation and correspondence; principally by solicitation.

Q. Calling upon shippers?

A. Yes, sir, and connecting lines also. I tried to cultivate all the connecting lines that I could.

Q. Where did the freight originate that you were soliciting?

A. All over the country.

Q. It was in both directions—to New York and from New York?

A. Yes, sir; east-bound and west-bound.

Q. Originating when west-bound how far from New York—any place?

A. There was no limit. Wherever I found a shipment I tried to get it.

Q. What service do the soliciting agents as a rule perform for shippers?

A. If they are good soliciting agents they take care of his business for him as much as they can. They explain the movement of the freight, give him the best routes, the best rates, and look after his business in general, and keep him posted as to any changes in rates.

Q. Trace freight?

A. Yes, sir, and take care of his claims for him. I always regarded him as practically the agent of the shipper. You are paid by the

railroad, but you would not get any business unless you were the agent of the shipper. Try to give him the best information and the best rates possible.

1469 Q. And that in general, you say, would constitute the duties of soliciting agents?

A. Yes, sir.

Q. During the time that you were at work for the Southern Pacific, who was your chief?

A. Mr. Hawley was while he was with the road, and after him Mr. Spence.

Q. When did Mr. Hawley leave the road—January 1, 1902?

A. 1902, I think, yes, sir.

Q. Do you recall the time that the Union Pacific purchased the stock of the Southern Pacific?

A. I do, yes, sir.

Q. Certain changes were made in the organization about that time, not in New York, but generally I mean.

A. Yes.

Q. You remember that occasion, do you?

A. I do, yes, sir.

Q. Previous to that time, in soliciting freight how did you endeavor to route it to the Pacific Coast?

A. By the Morgan Line.

Q. The Sunset Route?

A. The Morgan Line and the Sunset Route, via New Orleans, until the Galveston Line was put on, and then via Galveston.

Q. From territory that was not tributary to the Morgan Line but tributary west of Pittsburg, how did you endeavor to route it?

A. All-rail Sunset Route to New Orleans.

Q. After the Union Pacific acquired its interest in the Southern Pacific did you have any new instructions with reference to the way you should work the freight?

A. No, sir; I tried to get business for the line I was really employed by. I regarded the Southern Pacific as my road, and that is the road I worked for.

Q. Were any instructions given you as to working for any

1470 other route than the Sunset Route after that time?

A. I believe there were some general rate divisions shown.

Q. That is what I want.

A. Yes, sir, I believe there were such.

Q. What were they?

A. Just showing the amount that accrued to the lines west of Omaha and the lines west of New Orleans. They were practically the same, as I remember.

Q. Oh, you mean the amount of revenue accruing?

A. Yes, sir.

Q. That is, the Union Pacific and Southern Pacific together received about the same revenue that the Southern Pacific did from New Orleans?

A. Yes, sir, as I remember it.

Q. Were there any instructions or requests given to you with reference to routing traffic by the Union Pacific and Ogden route?

A. No, sir, I don't believe there were. I regarded that as a second route always.

Q. A second route?

A. Yes, sir.

Q. Because the Southern Pacific participated in it?

A. Yes, sir, naturally.

Q. From whom did you get this information with reference to the amount of revenue accruing to the two lines after 1901?

A. I don't recall exactly. I think Mr. Spence. It was general information there in the office—the divisions of the rate, the divisions of the revenue.

Q. Did any superior officer at that time tell you to get the long haul if you could and the short haul if you could not get the long haul, or words to that effect?

A. No use telling me that; I always tried to get the long haul if I could get it.

Q. If you could not, you would get the short haul?

A. Yes, certainly. I would not let a competitor get it, I
1471 would not let another road get it.

Q. I direct your attention first to the time prior to 1901. Did the Union Pacific have a soliciting agency here?

A. It certainly did, yes, sir.

Q. Were you in competition with them?

A. I was.

Q. Active or otherwise?

A. Very active—as active as I could be.

Q. In endeavoring to route traffic by New Orleans?

A. Yes, sir. And I used to get it, too.

Q. You say you used to get it?

A. Yes, sir.

Q. Do you recall the percentage of the business out of New York for the Pacific coast that went by the Morgan Line?

A. No. The best of my recollection is we got about 60 per cent of it; I think it averaged about that.

Q. Was that increasing or decreasing from the time you commenced to be soliciting agent down to 1901?

A. I think it was about the same, except the variations that were caused by different conditions that existed. Conditions changed from time to time and we would lose business from time to time. I guess we held our own pretty well. It seems to me it was about the same.

Q. How many men, if you remember, did the Southern Pacific have in its soliciting department here in New York up to that time?

A. About five.

Q. All employed in this same work that you have spoken of?

A. Yes, sir. That was in New York City proper.

Q. Mr. Hawley testified that he had jurisdiction over everything east of the Mississippi River.

A. Yes, sir.

1472 Q. Did you have any men that traveled out of here?

A. No traveling freight agents out of New York, no, sir. We had a New York state agent, and then they had men located in Boston, Philadelphia and Pittsburg and those places around there.

Q. And those men were engaged in the same work that you were?

A. Yes, sir; they reported to Mr. Spence and Mr. Hawley—reported to the main office.

Q. Did you ever know in those days, prior to 1901, of business being secured by changes in rates?

A. Yes, sir, I did. I believe we always met competition.

Q. And those changes were sometimes made, in the first instance, by one and sometimes by the other?

A. Yes, I suppose they were.

Q. What have you to say about the question as to whether there was any competition here for business to Portland, Oregon?

A. I always tried to get all the business I could to Portland or any other business on the Pacific coast that we could handle.

Q. What class of business did you work for to Portland?

A. Anything that was offered.

Q. Do you remember what classes of traffic moved to Portland by the Sunset?

A. Merchandise, dry goods, machinery, etc. I don't remember now. That was a good many years ago, and I do not remember exactly, but all general business.

Q. All general business?

A. Yes, sir.

Q. Now, did you have anything to do with soliciting east-bound traffic?

A. Yes, sir.

Q. What classes?

1473 A. Dried fruit and canned goods, all the stuff that moved from California and Oregon and that section of the country.

Q. And you did solicit east-bound stuff of that character from Oregon as well as from California?

A. Yes, sir; canned salmon.

Q. From Portland?

A. Yes, sir. Apples and things like that which moved from that country.

Q. From the Willamette Valley?

A. Yes, sir.

Q. Were you successful or otherwise in your efforts to secure shipments that way?

A. Fairly so. We got business from that section.

Q. What line was your principal competitor out of Portland and that vicinity?

A. Well, all the lines that ran in there. Of course the Union Pacific was, and so were the other lines that handled the business. They were all-rail lines.

Q. Which was the strongest competitor out of Portland—the Union Pacific or the Northern Pacific?

A. I don't know. They were about the same, I suppose.

Q. Both lines?

A. They were all working for it.

1474 Q. Did you have to do with shipments to Colorado and Utah common points?

A. I did, yes, sir.

Q. What is the nature of the traffic that moves from New York to those places?

A. The same thing: general dry goods, machinery and everything of that character.

Q. All classes?

A. All classes of goods, yes, sir.

Q. Is that quite a considerable traffic or is it very light?

A. It used to be very spasmodic, as I remember it, especially to Colorado.

Q. What about Utah?

A. Well, Utah was I think more steady than Colorado. Colorado, though, always used to slow up till about November or December, and then there would be a big rush of it, as I remember offhand.

Q. Take the year all together in the aggregate; was it a large business?

A. Yes, sir, a pretty good business. We always carried some stuff out there.

Q. What is that?

A. We always carried some business out there, as I remember it.

Q. Mr. Hawley stated that the line to Galveston was not put on till 1901, I think.

A. Yes, sir.

Q. What is your recollection about that?

A. I think it was put on about 1897. I do not remember the exact date, but I believe it was put on prior to the Spanish war.

Q. You think it was prior to the Spanish war?

A. Yes, sir.

Mr. LOVETT. He is entirely mistaken about that.

Mr. SEVERANCE. Who?

Mr. LOVETT. The witness.

Mr. SEVERANCE. He is mistaken? Mr. Hawley was right, was he?

1475 Mr. LOVETT. Yes. It was after 1901.

Mr. SPENCE. 1903, I think. Mr. Hawley left in 1902 and it was put on after he left.

Mr. SEVERANCE. It was after that?

WITNESS. Well, we were running a line there in competition with the Lone Star Line during the Spanish war.

Mr. SPENCE. No; we were running from New Orleans.

WITNESS. Mr. Spence is probably right. I remember the competition there with the Lone Star Line.

Mr. SEVERANCE. Probably it was 1903, then.

WITNESS. Then I must be mistaken.

Q. Mr. Hawley testified you did have occasional business.

A. We did have that in the cotton season, and things like that; but I remember that competition between the Lone Star and the Morgan Line. The rates got down to nothing, pretty near.

Q. On what classes of traffic was that competition that you speak of?

A. Oh, on everything.

Q. To what points?

A. Principally Texas, local business. The competition at that time was the Lone Star competition.

Q. Did you have anything to do with the passenger business, or only with the freight business?

A. No passenger business, no, sir, except if I ran across anybody going there I would always try to get him to go by the Southern Pacific, but I didn't solicit business or try to get it.

1476 Cross-examination by Mr. LOVETT:

Q. During your connection with the Southern Pacific Company, it was interested in two lines engaged in traffic from this country to the Pacific coast, wasn't it, Mr. Throckmorton?

A. Well, the one via Ogden and the other via—three lines all-rail; the Morgan Line from here, and all-rail via New Orleans and via Ogden.

Q. Well, it had what is called the Sunset Route?

A. Yes, sir.

Q. Embracing the Morgan lines from New York to Galveston; I call that one line.

A. Yes, sir.

Q. You speak of that as two. And then the rail lines from the Gulf, either New Orleans or Galveston, or both, to California points and Portland. That was commonly called the Sunset Route, wasn't it?

A. Yes, sir. And then the other line, the Central Pacific line, was one of our lines.

Q. That is one of the lines extending from the Pacific coast to Ogden?

A. Yes, sir.

Q. Wasn't that always regarded as a Southern Pacific line?

A. It certainly was; yes, sir.

Q. I understood you to testify that in soliciting freight your first effort was to work it by the Sunset?

A. The Morgan line; yes, sir.

Q. And if you could not work it that way you would then try to work it via the Ogden route?

A. No, sir; I tried to work it by the Sunset, all rail.

Q. To where?

A. To the Coast via New Orleans.

Q. From this territory?

A. From this territory; yes, sir.

1477 Q. Rather than by Ogden?

A. Oh, certainly.

Q. How was that at Pittsburg and west of Pittsburg?

A. Well, it would depend upon just where it was located, but ordinarily we would try to get it via New Orleans, if we could possibly handle it that way. It all depended on the time; that all entered into it—the time of the year. If the connecting line had a car I would trade it off with them, if I could.

Q. Over what lines would it go by rail to New Orleans from this territory?

A. Any of the trunk lines out of here: the Louisville & Nashville, the Queen & Crescent; any of those lines to New Orleans.

Q. What do you mean by the trunk lines?

A. The Pennsylvania or any of the lines out of here; any of the big lines—Baltimore & Ohio, Pennsylvania; any of them.

Q. During what period did you work traffic that way?

A. As long as I was there.

Q. During the whole period you were connected with the company?

A. Yes, practically.

Q. What was your connection in soliciting traffic in the territory north of the Ohio River and Ohio River points, and west of Pittsburg and Buffalo?

A. Well, in this way: If I located a car and could get the routing here, I got it; if not, I notified Neimyer, the man in Chicago, so he would solicit whoever controlled it, or the consignees.

Q. Mr. Neimyer in Chicago was in the active work of that territory, was he not?

A. He was; yes, sir.

Q. Did you understand that his effort always was to work by way of the Ogden route?

A. Well, it depended. North of the Ohio River?

1478 Q. North of the Ohio River points.

A. Why, I think it was; yes. That would be the natural route for it to move; better time and everything.

Q. Prior to 1901, as well as subsequently?

A. Yes, sir.

Q. Wasn't the real competition from this teritory to Pacific coast points mainly between the all-rail lines in connection with the Atchison and the Sunset Route?

A. Well, I regarded them all as competitors.

Q. You regarded them all as competitors?

A. Yes, sir; any line out of here.

Q. Competitors of what—the Sunset Route?

A. Of the Sunset Route; yes, sir.

Q. There was no other way for the Union Pacific or any of the other lines out of here to get that traffic to the Pacific coast except by the Southern Pacific or Atchison, was there?

A. Sometimes spasmodically there might have been.

Q. There was no other rail-line to the Pacific coast?

A. No other rail-lines. The Union Pacific could not get in except through that way.

Q. The Union Pacific's traffic to and from the Pacific coast was interchanged entirely with the Southern Pacific at Ogden, wasn't it?

A. Except at Portland.

Q. How is that?

A. Except at Portland.

Q. Well, I mean points south.

A. Yes, points south; Sacramento and south.

Q. It couldn't make rates to or from California, lawfully, without the concurrence of the Southern Pacific, could it, under the Interstate Commerce Act?

A. Not under the Interstate Commerce Act; no, sir.

1479 Q. That is, it could not lawfully make a rate without the Southern Pacific Company, into California?

A. No, sir.

Q. Mr. Hawley testified this morning that he didn't think that the Southern Pacific's share of the Portland business from the Atlantic seaboard amounted to as much as three per cent. How does your impression——

A. Well, I think he is better able to judge it than I was.

Q. It was a very small traffic, wasn't it?

A. Well, comparatively speaking it was, yes, sir; compared with any other points out there.

Q. There was a difference of upwards of 1,500 miles in distance, in length of haul, wasn't there?

A. I beg pardon.

Q. There was a difference of upwards of 1,500 miles in favor of the all-rail line?

A. Yes, sir, there was.

Q. Now, Mr. Throckmorton, didn't the same competition, the same rival solicitation by the Union Pacific and the Southern Pacific con-

tinue after 1901 as before, as long as you were connected with the company?

A. It certainly did.

Q. Weren't you as strenuous in getting business for the Sunset Route as against the all-rail lines then as you were before?

A. I certainly was; yes.

Q. Was there any lessening of activity on the part of the all-rail lines?

A. I didn't notice it. I think they rather increased in activity, if anything, on the part of the Morgan line and the Southern Pacific.

Q. Did the Union Pacific solicit as aggressively against the Sunset afterwards as it did before 1901?

A. As far as my knowledge goes it certainly did, yes, sir.

1480 Q. I believe you testified that you did not require any instructions to work business by the way in which you could get the most revenue; that you did that anyhow?

A. I naturally did, being a Southern Pacific man. I would do it anyway. Anybody in any business would do it the way they could get the most money out of it.

Q. Having several routes you naturally selected the one that afforded the most revenue?

A. Yes. The only occasion to deviate from that would be a blockade, or some physical reason.

Q. Unless favored by the Southern Pacific as against the Denver & Rio Grande, the Union Pacific was practically at the mercy of the Southern Pacific with respect to California and Pacific coast business south of Portland, wasn't it?

A. You mean in routing it?

Q. At any time.

A. Yes, sir.

Q. You are familiar with the situation of those lines, aren't you?

A. I am, yes, sir.

Q. That the Union Pacific extends merely from the Missouri River to Ogden?

A. Yes, sir.

Q. It is an intermediate carrier, without any rate-making power with respect to transcontinental business?

A. It was.

Q. And for the Pacific coast business it was dependent upon the Southern Pacific; I mean south of Portland?

A. Well, that is when we controlled it.

Q. Wasn't it whether you controlled it or not?

A. No, sir, it wasn't.

Q. It is the only outlet to the Pacific coast, isn't it?

A. Yes, but they could get cars that we had no control over

1481 at all, couldn't they? We would get the business anyway. They didn't want to depend upon us, because they had all those other connections working here.

Q. What I mean is that the business originating for instance on the Pacific coast and delivered to the Southern Pacific Company.

A. Oh, absolutely. East-bound you are talking about?

Q. Yes.

A. Yes, sir.

Q. Wasn't that also true of west-bound business?

A. No, it was not.

Q. How did the Union Pacific get it there without using the Southern Pacific west of Ogden?

A. Oh, we would get it anyway.

Q. Well, that is what I say.

A. The Southern Pacific would get it, certainly; of course they would. I thought you said that the Union Pacific controlled it, that they were dependent upon us for California business. They were not, because they could get it anywhere they wanted it.

Q. They were dependent on——

A. They had to give us the business.

Q. In either case?

A. They certainly did in either case.

Q. The business to Colorado points in this territory was generally small in volume, wasn't it?

A. It would be all comparative. I wouldn't say it was small. I think we carried quite a good deal of it.

Q. It was a comparatively small traffic of the Southern Pacific, wasn't it?

A. Well, of the total tonnage you mean?

Q. Of the tonnage of the Morgan line, we will say.

A. Yes, it was.

1482 Q. As compared with the business for Texas, or the Pacific coast, or for Louisiana?

A. Yes, sir.

Q. It was very small compared with that traffic?

A. Well, I am not able to say it was very small.

Q. Do you know about the volume of it, then?

A. I don't know the exact tonnage, no. As I said, it moved spasmodically. It used to be controlled a good deal by the situation out there in rates, and so forth. Sometimes there would be quite a rush of business out there and they would all hold back, they wouldn't order any business for quite a while, and then there would be quite a tonnage moved. I don't know anything about it.

Q. Where was it controlled? Out there or here?

A. Oh, both ends. Sometimes the consignees controlled, and sometimes the shippers.

Q. What did the traffic consist of, principally?

A. Well, it consisted of groceries and dry goods and machinery; all general merchandise.

Q. If that moved all-rail over what lines would it reach Colorado, or over what lines might it reach Colorado?

A. The Union Pacific and the D. & R. G. would be the final lines, I think.

Q. Are the Union Pacific and the D. & R. G. the only lines operating between the Atlantic seaboard and——

A. Oh, no; the Terminal Lines.

Q. I didn't ask you about the terminal lines.

A. I beg your pardon. It would go all-rail from Omaha and go on through out there. Then the Lake competition, when that was open.

1483 Q. The principal haul would be over the lines east of the Missouri River, in the matter of distance, wouldn't it?

A. Yes, sir.

Q. And west of Chicago, or the Missouri River, it could go via the Union Pacific or the Atchison or the Rock Island or the Missouri Pacific or the Burlington or any one of those several lines?

A. Yes, sir, all those lines.

Redirect examination by Mr. SEVERANCE:

Q. One question that Judge Lovett was asking you about; whether the Southern Pacific did not control the getting of business by the Union Pacific to the Pacific coast. Now, the consignor or consignee controls the routing, does he not?

A. Yes, sir.

Q. In most cases?

A. Very largely, yes, sir.

Q. And if the Union Pacific's soliciting agent could induce the consignor or consignee to route his car by the Union Pacific the Southern Pacific had nothing to do with it except to haul it from Ogden to San Francisco?

A. That is all, yes, sir.

Q. It had nothing to do with the selection of the route?

A. No, sir.

Q. And that is the work that was done by the soliciting agent of the Union Pacific, was it not?

A. Yes, sir; that is what they tried to do.

Q. And you, acting for the Southern Pacific, were trying to get that business to go via New Orleans?

A. Yes, sir.

Q. In working as you did, as a last resort, you said, where you couldn't get the long haul taking the short haul, working

1484 the business by Ogden, did you discriminate, prior to 1901 as between the Union Pacific and the Denver and Rio Grande in reaching there, or did you work with both of them?

A. I worked with every line, but principally the Union Pacific.

Q. But you did work with the Rio Grande, didn't you?

A. Sometimes, yes, sir.

Q. Where you could get business that way?

A. Yes, sir, if I could get it by reciprocity; if I could exchange cars I took it—or the initial lines.

Q. And where you couldn't you took it by the Sunset Route?

A. Yes, sir.

Q. You knew about shipments by Panama, did you not, Mr. Throckmorton?

A. Yes, sir, I did.

Q. What is the distance to San Francisco by way of Panama?

A. I don't know.

Q. It is a great deal farther than by the Sunset Route?

A. Naturally, yes, sir.

Q. That was a factor in the competition, wasn't it?

A. Yes; business that moved via Panama.

Q. Do you know about ships going around through the Straits of Magellan?

A. Yes, sir.

Q. Do you know the distance from San Francisco to New York by the Straits of Magellan?

A. Oh, roughly I do. I don't know the mileage, no, sir.

Q. Well, it is the south end of South America, isn't it?

A. Oh, I know all about the geography of it, but I don't know the miles.

Q. That is considerably farther than the all-rail lines from here to San Francisco?

A. A great deal farther.

1485 Q. So that the matter of distance is not controlling, is it?

A. It never was, I guess.

Q. No.

A. The time and rate I guess controlled; the time you can make and what rate you can get.

Q. Now, the agencies of the Southern Pacific and Union Pacific were not consolidated in New York at the time of the purchase of the Southern Pacific stock, were they?

A. No, sir; they never have been.

Q. How was it further west?

A. I believe they were all practically consolidated, except in San Francisco; I think Chicago and Pittsburg and all those were all joint agents.

Q. Then when you were testifying about the competition keeping up after 1901 between the Union Pacific and Southern Pacific, you referred to New York business, didn't you?

A. Yes, I referred to any business that I could control.

Q. And you worked only in New York, here?

A. I worked in this immediate territory, yes, sir.

Q. But you didn't intend to say by that, that competition could continue at New York and Pittsburg and Chicago and these other places where they had the same agent?

A. Well, I cannot state in regard to that; I don't know.

Q. You heard Mr. Hawley's testimony about that this morning?

A. Yes.

Q. I didn't know whether you intended to contradict Mr. Hawley about it.

A. Oh, no.

Q. Were you aware that the Union Pacific had a boat line from Portland to San Francicco?

A. I was, yes, sir.

Q. Do you know of any traffic going that way at times, in case of war, or business?

1486 A. None to speak of. I never routed any that way.

Q. You never did, but——

A. No. Oh, yes, I suppose it did move that way.

Q. Yes, that is what I mean. You know it did move that way?

Mr. LOVETT. He didn't say he knew. He said he supposed it moved that way.

Mr. SEVERANCE. I thought he said he knew it.

WITNESS. Oh, no; I say I supposed it did.

Q. Well, were you so informed?

A. No, I don't believe I ever was.

Q. Now, Mr. Throckmorton, you were asked if the business into Portland from New York was not a comparatively small business?

A. Yes, sir.

Q. And by that answer what did you mean? Compared with what?

A. Well, with the general tonnage out of here with the Morgan line.

Q. But taken by itself, not by comparison with something vastly greater, was it a small business or was it a considerable business, considerable tonnage?

A. I really do not know. I think the tonnage reports ought to show that at that period. The billing would show, I should think, what moved.

Q. You remember of getting lots of business then?

A. I remember cars, yes, sir.

Q. And all the years you were working there up to 1901?

A. Yes, I remember getting cars from there.

Q. Now, after 1901?

A. I remember the last lot of stuff I lost—a lot of apples. They said they wouldn't let us handle them. That was the reason we couldn't get them down the long haul there. They objected to the handling.

1487 Q. When was that?

A. Oh, that was in nineteen hundred and something. That was one of the losses—the biggest stuff I went after. It was going to France; went abroad.

Q. And that moved by all rail, did it?

A. I think so, as I remember it. That was the easiest route for it to move; made the best time, in the handling.

Q. Do you recall the fact that there was any change after 1901 in the matter of movement of traffic to and from Portland?

A. I do not recall.

Q. You don't remember about that. That is all.

Recross-examination by Mr. LOVETT:

Q. Didn't you solicit Portland business just as actively after 1901 as you did before?

A. Yes, sir. I don't recall any change; that is what I testified to.

Q. The Portland business that you were able to control, as compared with total Portland business, was small, wasn't it?

A. I should think it was; yes, sir.

Q. That is, as compared with the business handled by the all-rail lines?

A. Yes, sir.

Q. Now, Mr. Severance asked you frequently, or rather assumes that there was competition between the Southern Pacific and the Union Pacific. I want to make that clear as to what is meant there. Isn't it true that the Sunset route was competing with the all-rail lines, one link in which was owned by the Southern Pacific itself, from Ogden to San Francisco? You didn't mean to say——

A. One of the all-rail lines, yes, sir. The Santa Fe, of course, was competing.

Q. You don't mean to say that the Union Pacific was com-
1488 peting with the Southern Pacific line between Ogden and the Pacific coast, do you?

A. I didn't say that.

Q. Well, Mr. Severance assumes that by his questions. That is why I wanted to make it clear.

Mr. SEVERANCE. No; I beg your pardon. I did not assume anything of the kind.

Mr. LOVETT. In all of your questions you assumed that the Southern Pacific and the Union Pacific were competing lines.

Mr. SEVERANCE. No; I asked him that question and he said they were. That is his testimony.

Mr. LOVETT. I want to know what he means.

WITNESS. They were in competition for that business. Mr. Tenbroeck's office and Mr. Hawley or Mr. Spence were all trying to control that business. They were active competitors for it, and tried to get the business undoubtedly.

Q. You mean, don't you, that the Sunset route——

A. The Sunset route, yes.

Q. —was competing with the all-rail lines, including the line made up by the Union Pacific and the Southern Pacific?

A. Everything included, yes, sir.

Q. In other words, the Sunset route was the preferred route in your work?

A. Yes, sir.

Q. But you don't mean that the Union Pacific and the Southern Pacific line from Ogden to the Pacific coast were competing lines; they are connecting lines, aren't they?

A. They are connecting lines, but they were also competitors to control the business. I mean all the cars that the Morgan line office—the Southern Pacific offices could control, we tried to control and
1489 route, naturally. It gave us more credit the more tonnage we could get.

Q. Via the Sunset route?

A. Or the all-rail route. We wanted to control it; tried to get the business.

Q. What do you mean by the all-rail route?

A. I mean Ogden; through Ogden or through New Orleans. Through Ogden we were competing actively to get that business and to control it and divert it if we could.

Q. And you would send it by the Sunset route, if you could, and if not you would send it by the Ogden route?

A. Yes, sir; and if it went Ogden route, why——

Q. In that case you were working with the Union Pacific, weren't you?

A. Yes, sir, we were.

Q. Weren't you working the Sunset route via New Orleans and El Paso as against the trunk lines from the seaboard to the Missouri River, and the Texas & Pacific to El Paso? You were working primarily for the Sunset route, weren't you?

A. Absolutely, yes, sir.

Q. And next to that you worked for the Ogden route? That is true, isn't it?

A. When I could not get the Sunset route I sent it by Ogden, most certainly.

Q. And with respect to all the business moving by way of the Ogden route, the Sunset and Southern Pacific were not competing lines, but connecting lines; isn't that true?

Mr. Severance. What is that? Just read that question; I don't think the witness understood it. I don't think Judge Lovett intended to say what he did.

Mr. Lovett. All right; read the question and see.

(Question read.)

Mr. Lovett. No; I didn't mean that. Strike out that question, please.

1490 Q. What I mean is, isn't it true that the Southern Pacific were interested in two transcontinental lines—the Sunset route, on which it could get all the revenue, and the Ogden route, on which it could get a share of the revenue for the haul between the Pacific Ocean and Ogden? That is true, it is not?

A. Yes, by the Sunset route you also mean the all-rail route by New Orleans, I presume?

Q. Yes, sir.

A. Yes, sir.

Q. Then you also worked some of it by the Sunset route to New Orleans?

A. Oh, yes, a good deal.

Q. Now, the point I am trying to make clear is, if it is the truth, that the Union Pacific owned a link of about a thousand miles in one of the all-rail lines to the Pacific coast, and the Southern Pacific also owned a link of about 850 miles in the same line?

A. Yes, sir.

Q. And that those lines were connecting and not competing lines?

A. Don't you think they could be both?

Q. It never occurred to me that they could. I want your opinion about it.

A. I think so.

Q. You think they were both connecting and competing lines?

A. I think they were both connecting and competing. The freight was moved over these lines; they certainly had to get it to the Southern Pacific, and they were competing in the fact that the Southern Pacific wanted to control all the business they could over those lines, and sought to get the business and route it.

1491 Q. Didn't the Southern Pacific get every pound of freight destined to the Pacific coast that the Union Pacific took to Ogden?

A. Absolutely, yes, sir.

Q. Then how could they compete in respect to that—that is, those two lines? What necessity was the Southern Pacific under, so far as that line is concerned, of working against the Union Pacific, if it got all the freight anyhow?

A. Well, we always tried to divert it if we could, even after it moved there. If it moved via Omaha and Ogden and that route, and we knew it, we would try to put it down by the all-rail line via New Orleans.

Q. Do you mean that the Southern Pacific——

A. I mean if we found out a car—if I got a telegram saying a car had moved Union Pacific and Southern Pacific, I would wire ahead to know why it moved that way, and we would always try to get it via our all-rail route, the Sunset route.

Q. You mean if the Union Pacific got control of a car of freight that was going to the Gulf and going over the Southern Pacific line from Ogden, that the Southern Pacific would still try to avoid taking that car?

A. Oh, no; not that car; future cars.

Q. Well, in other words, you mean what you said a number of times, that you would work all the business you could by way of New Orleans?

A. Yes, sir; that is exactly what I mean.

Q. But everything that the Union Pacific handled for the Pacific coast went to the Southern Pacific anyway at Ogden?

A. Yes, sir.

Q. The Texas and Pacific and its connections attempted to handle a good deal of trans-continental business by way of El Paso, didn't it?

1492 A. They used to get some. I don't believe it amounted to very much.

Q. What they got was delivered to the Southern Pacific at El Paso, wasn't it?

A. Yes, sir.

Q. And it was a connection with the Southern Pacific line?

A. Yes, sir.

Q. This Colorado and Utah business moving by the Gulf—some of that moves by Galveston, doesn't it?

A. It all moves by Galveston practically now; that is, since they got started on that line.

Q. What rail lines take it out of Galveston?

A. Well, if the Morgan line gets it, it generally goes up on the H. & T. C.—the Houston & Texas Central.

Q. But if the Mallory line gets it?

A. It might go by various lines.

Q. Generally over the Atchison, doesn't it?

A. The Atchison is the natural connection, yes, sir.

Q. And the Atchison also has a line reaching the same points from Chicago, hasn't it?

A. Yes, sir.

Q. And the Atchison works that business by the Gulf, too, doesn't it?

A. In connection with the Mallory line.

Q. Doesn't the Missouri, Kansas and Texas also?

A. Yes, sir.

Q. Where would it take it?

A. It would take it from Galveston.

Q. It would carry it to Kansas City, wouldn't it?

A. No, sir, I don't think it would.

Q. Where would it take it?

A. Why, it would take it at some junction point in the northern part of the State of Texas and turn it over to one of the lines. I do not think they would take it up to Kansas City. That would

1493 be a roundabout way. I do not think any freight would move that way.

Q. Have you any idea what the difference is in distance?

A. No, I have not.

Q. Do you think it could exceed 150 miles or 200 miles?

A. Oh, I should think so.

Q. You think it would be greater than that, do you?

A. Something about that; about 200 miles.

Q. Didn't the Texas & Pacific use to engage in that business, too?

A. To Colorado?

Q. Yes.

A. I don't think so.

Q. You don't know as to that?

A. I don't know as to that, no. I never routed a car that way. I don't see how they could handle it very well by Shreveport and up that way.

Q. I understood you to testify that in soliciting business which you found you could control only by way of Ogden, that while you would work preferably with the Union Pacific, you would also work via the Denver & Rio Grande?

A. Why, if I found a car that a man wanted to go D. & R. G., naturally I would.

Q. It was immaterial to the Southern Pacific whether it went over the Union Pacific or the Denver & Rio Grande, wasn't it?

A. Yes, I think it was immaterial.

Q. Isn't it true, Mr. Throckmorton, that shippers are not interested in the division of rates between carriers?

A. Why, I don't think they are, especially.

Q. You can not see how they could be, can you?

A. Not under the present conditions I can not.

Q. Well, under any lawful rates do you see how they could be?

A. No, sir, I do not.

1494 Q. What is the most potential factor for securing business for the Union Pacific from this territory or any points east of the Missouri River, for Pacific coast points? Is it the work of their agents or the work of their connecting lines east of the Missouri River?

A. Well, they both enter into it. I think the trunk lines work pretty hard for them, naturally.

Q. All the trunk lines?

A. All the lines out of here; and the initial lines work against the Morgan line.

Q. Which do you regard as the most effective in securing control of the traffic?

A. I really suppose they get a larger percentage of business from the connecting lines than they do from the solicitation of their own men.

Q. Isn't it very much larger?

A. I should think so. Of course I am not speaking from knowledge at all; just my opinion.

Q. Now, as to the work of the soliciting agents generally, Mr. Throckmorton, I understood you to say that their duties, among other things were to cultivate their connecting lines?

A. Yes, sir; interchange of business.

Q. Isn't that a very important work, too?

A. I always so regarded it.

Q. Isn't it about as important, or more important perhaps, than the shippers themselves?

A. With rates at an equality it is. When moving under tariff rates it certainly is.

Q. Under lawful rates it is much more effective than the work of the soliciting agent?

A. It is the duty of every man hunting that business to get next to the business of the connecting lines, and if he does not do it he ought not to hold his job. That is what I think about it.

1495 By Mr. SEVERANCE:

Q. Judge Lovett was just asking you about the amount of weight that the various soliciting agents would have in securing business for the Union Pacific?

A. Yes, sir.

Q. It is a fact, is it not, that business is exchanged more or less?

A. Reciprocity, yes, sir.

Q. And the Union Pacific always, prior to 1901, maintained agencies in California, didn't it, endeavoring to secure east-bound routing?

A. Certainly.

Q. To secure that as against the Sunset Route to the east?

A. Yes, sir.

Q. And the Union Pacific then had that traffic to exchange with the lines east of the Missouri River in order to secure return favors on west-bound traffic? That is true, isn't it?

A. That is true.

Q. And the same applied to the Denver & Rio Grande, didn't it?

A. I think so.

Q. Now, the lines between the Missouri River and Chicago have commercial agencies both on the Atlantic and Pacific coast, haven't they?

A. Yes, most of them have.

Q. The Northwestern?

A. Oh, yes.

Q. The St. Paul?

A. Yes.

Q. The Wabash, and the Rock Island, and all have?

A. Yes, most of the lines have.

Q. And those soliciting agents work with their connections in the same way that you have testified to?

A. Yes, sir.

1496 Q. Now, in addition to the work the soliciting agents do with each other as representatives of the different lines, what work do they do with the shippers? You have already stated in general, haven't you, what work they do?

A. Yes, sir; the general duties.

Q. And you do not intend by anything you testified to in answer to Judge Lovett, to modify anything you said about their work with the shippers?

A. No, sir; they work just as hard with the shippers as they ought to—cultivate them.

Q. They use all these methods in getting business?

A. Yes, sir.

Q. And all these methods were used by the Union Pacific to get business away from the Sunset route, were they not, when they were competing?

A. Yes, sir.

By Mr. LOVETT:

Q. Mr. Throckmorton, one question that I should have asked you before which I forgot. Mr. Severance in his redirect examination asked you if the Union Pacific secured the routing of a car and took it to the Southern Pacific, the Southern Pacific at Ogden would have nothing to do but to haul it to the Pacific coast, that it would have to do it. Now, as a matter of fact the Southern Pacific would have a good deal to do with making the rates under which that car moved, wouldn't it?

A. Why, yes, I should think it would.

Q. The Union Pacific could not get it there except at rates agreed to with the Southern Pacific, could it?

A. No, sir, it couldn't.

Q. What?

A. No, sir.

By Mr. SEVERANCE:

Q. By my question I was assuming that in that instance
1497 the Southern Pacific was obeying the law and leaving it to the published rate. You understood that, didn't you?

A. I did, yes, sir.

1498 JOHN F. CHUMASERO,

called as a witness on behalf of complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Chumasero, what is your business?

A. I am with the Royal Baking Powder Company.

Q. How long have you been with that company?

A. Since 1899.

Q. In what position?

A. Previous to 1901 as general clerk in one of their departments. Since March, 1901, I have had charge of the traffic, also one of the departments.

Q. Where is your factory, or factories? Where are your factories?
A. In Brooklyn—the main factory.
Q. Do you ship to Pacific coast points?
A. Yes, sir.
Q. From where?
A. From Brooklyn.
Q. A large or small amount of freight?
A. Fairly large.
Q. You have the largest business in that line in the country, haven't you?
A. We have going to the Pacific coast, certainly.
Q. Do you ship carload or less than carloads?
A. Both; that is both generally; not both to the coast.
Q. What do you ship to the coast?
A. Carloads.
Q. In what way, during that time from 1901 on, has your traffic been solicited, if at all?
A. By soliciting agents.
Q. Of different lines?
A. Of the transcontinental lines, yes, sir.
Q. And by the transcontinental lines you mean what lines?
A. Such as the Southern Pacific, the Union Pacific, the Santa Fe, the Northern Pacific, the Great Northern, the Canadian
1499 Pacific; all of them.
Q. Is your freight of a character that it can be moved by any line to the coast?
A. Yes, sir.
Q. And the rates are the same, aren't they?
A. Yes, sir.
Q. In soliciting your business, I understand there is no attempt at cutting rates or anything of that kind?
A. Not at all.
Q. What inducements are offered, or how do they endeavor to get your business—the soliciting agents?
A. Well, the main factor now is the service, the length of time, the general handling of the goods, the condition in which they arrive, and the personality of the soliciting agent.
Q. All of those elements enter into the securing of traffic?
A. All of those elements; yes, sir.
Q. How do you route your traffic to the coast?
A. What do you mean by that, sir?
Q. By what roads are you in the habit of shipping?
A. All of them.
Q. To California points how do you ship?
A. Southern Pacific or Santa Fe, mostly.
Q. By Southern Pacific you mean the Morgan line?
A. The Morgan line; yes, sir.
Q. And to Portland?

A. Generally Northern Pacific or Great Northern and the Oregon Short Line.

Q. Via all those routes?

A. Via all those routes.

Q. And have you any set rule about it, or do you ship quite largely in response to solicitation?

A. No rule, sir. It is entirely in my discretion.

Q. And you do not adhere to any rule in that regard?

1500 A. No.

Q. Do you ship to the Orient in that direction?

A. Not by the coast; no, sir; all by Suez.

Cross-examination by Mr. LOVETT:

Q. In mentioning the lines by which you ship to Portland you didn't mention the Southern Pacific. You do not ship to Portland by that line?

A. We do not ship that way; no, sir; not to Portland.

Q. Why?

A. Because I think it is too long and around-about way, and requires too many handlings of the goods.

Q. You are solicited for your Pacific coast traffic by all the lines out of New York, aren't you—not merely by what you call the transcontinental lines, but lines west of the Missouri River, and the Southern Pacific and Atchison?

A. No, I should think not. I should say it was confined to the transcontinental agents.

Q. Aren't you solicited by the New York Central?

A. Not by California agents. In a general way they want all the business they can get, but we are not specifically solicited for California business or any specific coast business.

Q. By any of the lines leading out of New York?

A. No, sir. Of course if they hear that I have got a car moving they may come around and try to get it.

Q. But you are not solicited by them as actively as by the other lines?

A. No, sir; not at all.

Q. Has solicitation by the agents of the Union Pacific and the Southern Pacific continued to be active? Are you solicited by both?

A. Right along; yes, sir.

1501 Q. What is that?

A. Yes, sir.

Q. You haven't observed any change in that respect in recent years, have you?

A. No, sir; not at all.

By Mr. SEVERANCE:

Q. Still competing, are they?

A. Yes, sir.

1502 FRANK B. MESICK,

called as a witness on behalf of complainant, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Mesick, where do you reside?
A. My legal residence is Deal Beach, New Jersey.
Q. Where is your business?
A. 401 Broadway, New York.
Q. And what is your business?
A. Railroading.
Q. With what system?
A. The Rock Island.
Q. How long have you been with the Rock Island?
A. Going on 37 years.
Q. What is your present position with the Rock Island?
A. General Eastern Freight Agent.
Q. Do you also represent the Frisco?
A. No, sir.
Q. Just the Rock Island?
A. The Rock Island.
Q. And how long have you been the general eastern agent of the Rock Island?
A. Since 1882.
Q. What in general are your duties as the general eastern agent of the Rock Island road?
A. To get business for the Rock Island road—freight.
Q. In what way?
A. Solicit from the shippers. I first make them understand, if I can, that we are the best road west of Chicago, St. Louis, Kansas City, and Omaha.
Q. Well, that isn't hard, is it?
A. Well, sometimes we find it more difficult than others.
Q. Go ahead.
A. Well, that is all that it is necessary for us to do. If we can satisfy them we can get it.
Q. Do you have some gentlemen employed under you in the same work?
A. Yes, sir.
1503 Q. Making the same representations to shippers?
A. I presume they do, yes, sir.
Q. You heard Mr. Throckmorton's testimony a little while ago, in general, as to the duties performed by soliciting agents?
A. Yes, sir.
Q. Do you agree with that in general—so as to save time?
A. Yes, sir, in general; we all work along the same line.
Q. What is the eastern terminus of the Rock Island?
A. Chicago.

Q. And its western terminus?
A. Denver and El Paso.
Q. Do you also reach Omaha?
A. Yes, sir.
Q. How long ago did you build into El Paso?
A. About seven years.
Q. Prior to the time you got into El Paso your only route on transcontinental business was by Denver or Omaha, wasn't it?
A. Yes, sir.
Q. With whom did you work; with what transcontinental line did you work in handling transcontinental business, before you got to El Paso?
A. The Union Pacific, the D. & R. G.
Q. Dependent on whether you could carry it to Denver or Omaha?
A. Yes, sir; that is right.
Q. You would get the entire haul to Denver?
A. We would get the entire haul to Denver, and we take it when we consider it is to our interest; otherwise we aim to deal fairly with all of our connections; and if cases arise where we think it is to our interest to work with the Union Pacific via Omaha, we work that way, ignoring the long haul.
Q. And get the haul from Chicago to Omaha?
A. Yes, sir.
Q. In working for business in connection with the Union Pacific, we will say, on transcontinental business, with whom
1504 would you work—with their agents, or——
A. Well, if we felt it was necessary; or work independently of them.
Q. With the shippers?
A. With the shippers.
Q. Was it frequently your custom to work on the same shipment with the Union Pacific force?
A. At times, yes, sir. If we felt they were as strong as ourselves, or a little stronger, we might go to them.
Mr. LOVETT. What was that question?
Mr. SEVERANCE. I ask him if he worked with the agents of the Union Pacific to secure shipments at times.
Q. Now, when you were working that way with the Union Pacific on transcontinental business, with whom were you competing?
A. We were competing with the Sunset Route, the Atchison, Topeka and Santa Fe and the Denver & Rio Grande.
Q. That is on California business?
A. Yes, sir.
Q. And on the northern coast business, when you were working with the Union Pacific, I suppose you were competing with the northern lines?
A. Yes, sir, the Great Northern.
Q. The Great Northern and Northern Pacific?
A. Yes, sir.

Q. How energetic was that competition from the time you commenced, 25 years ago, to be the general eastern agent of the Frisco up to the time you built into El Paso?

A. Please repeat that. How energetic?

Q. Yes. I mean was it an active competition.

A. Certainly; and constant.

Q. Active and constant?

A. Yes, sir.

Q. Were you familiar with the competition that existed between the Union Pacific and the Sunset Route prior to 1901?

A. No, sir.

1505 Q. You didn't know——

A. Nothing about it.

Q. —the details about how they handled it, except as you were brought into connection with it?

A. That is all.

Cross-examination by Mr. LOVETT:

Q. Weren't you also competing with the Burlington and the Missouri Pacific?

A. Yes, sir. In transcontinental business, I suppose you mean.

Q. Yes, that is what I mean.

A. Yes, sir.

Q. And the Chicago, Milwaukee & St. Paul?

A. Yes, sir.

Q. And the Chicago & Northwestern?

A. Yes, sir.

Q. The Illinois Central between Chicago and Omaha?

A. Yes, sir.

Q. Your lines extend as far east as Chicago?

A. Yes, sir.

Q. Does the Rock Island send any business to California by way of El Paso?

A. Yes, sir.

Q. Over the Southern Pacific from El Paso to California?

A. Yes, sir.

Q. Do you work any of that business, Mr. Mesick?

A. Yes, sir.

Q. With whom do you compete there, in the sense in which Mr. Severance used the term?

A. If it is Southern California—well, we will say that route we use more strenuously than any other, for Southern California; we are competing against the Sunset, the Atchison, Topeka and Santa Fe—in fact any line running up to Denver connecting with the San Pedro—as well as the Union and Southern Pacific.

Q. You say you are competing with the Sunset. You mean that portion of the Sunset east of El Paso, don't you.

A. Yes, sir.

1506 Q. Because the Sunset Route handles your business from El Paso to its destination in California?

A. Well, if you wish to call it Sunset. We always speak of it as the Southern Pacific.

Q. That is part of what is known as the Sunset Route, isn't it?

A. Yes, sir.

Q. What was the length of your haul on that business ordinarily, as compared with the length of the haul that the Southern Pacific gets out of the same business?

A. I can not answer it.

Q. There is not much difference, is there?

A. I do not believe there is a difference—at least it is my impression the earnings are about the same. I have no information. It is on my mind. Probably it has been figured out some time, but I can not give you the distance, because I don't know.

Q. The agents of the Union Pacific and the Southern Pacific here in New York, in working with you, or when you come in contact with them, are they active, both?

A. Very.

Q. Have you noticed any change in that condition?

A. No, sir.

Q. It has continued the same during a long period of years, then?

A. Yes, sir.

Q. Do the Rock Island lines handle any business by the Gulf from the Atlantic seaboard to Colorado and Utah points?

A. Yes, sir.

Q. It moves to Galveston and New Orleans?

A. Yes, sir.

Q. By the Mallory line or the Morgan line?

A. Yes, sir.

Q. And thence by rail to Colorado and Utah points?

A. Yes, sir.

1507 Q. I suppose that if you can not get business to those points by way of Chicago and thence over your line, but can get it by the Gulf, you will take it that way, won't you?

A. We take it any way we can get it.

Q. You have several routes?

A. Yes, sir.

Q. And I suppose you prefer the one that affords you the most revenue, do you not?

A. Why, yes; that is the principle upon which we work, yes, sir.

Q. You have rather an active route for that territory by the Old Dominion line?

A. The Old Dominion?

Q. Yes.

A. Very.

Q. To Birmingham, Alabama?

A. Very.

Q. Have you a map of your system?

A. At the office, yes, sir.

Q. I would like to have it offered as an exhibit.

A. I assume we have it there.

Q. You have an advertising map, haven't you?

A. Yes, sir. I would be glad to send it down.

Q. If you will mark one, sign your name to it, and send it down you needn't trouble about coming yourself.

A. Very well.

Q. If you send it to the Examiner—and I would like to have that marked as an exhibit.

A. Now, I assume that we have one. We do have them, and if it is there you can have it tomorrow.

Q. Well, I want one identified by you.

A. All right.

Mr. SEVERANCE. Do you want the Rock Island system, or the Rock Island and the Frisco system both?

Mr. LOVETT. I want the map that he uses in advertising—their advertising map.

Redirect examination by Mr. SEVERANCE:

Q. Judge Lovett was asking you with reference to business
1508 into Colorado common points, Mr. Mesick?

A. Yes, sir.

Q. And you stated that you could reach Colorado common points from Galveston in connection with the Morgan line, or you could reach it by the all-rail lines.

A. I think I stated we could reach from Galveston via the Morgan line and the Mallory line.

Q. Yes, from both.

A. Yes, sir.

Q. But one combination would be the Morgan line to Galveston and your line from there?

A. Not our lines, the H. & T. C., but the Trinity & Brazos Valley. They would make the delivery to us at Fort Worth.

Q. That is one of the Frisco lines which runs from Galveston to Fort Worth?

A. No, sir; it is the Brazos Valley. I do not know who the owner of it is since the Colorado Southern has been sold; but it is supposed to be owned by the Rock Island and Colorado Southern. Whether that is so or not I do not know.

Q. Does that take you to Fort Worth?

A. That takes us to Fort Worth, yes.

Q. And then the Rock Island takes it from there?

A. From Fort Worth, right through.

Q. You have your own line to Fort Worth?

A. Yes, sir.

Q. You can also get into Colorado common points by rail from Chicago?

A. Yes, sir.

Q. Now, the Union Pacific is one of your competitors in to Colorado common points?

A. Yes, sir.

Q. Whether your traffic comes by the Morgan line or by Chicago?

A. Yes, sir, it is a competitor.

Q. It is a competitor both ways?

1509 A. It is a competitor more from the Missouri River, over its own rails.

Q. Over its own rails?

A. Yes, a friendly competitor.

Q. I hope they are all friendly. Trying to get all the business they can, aren't they?

A. Yes, sir.

Q. And I believe you stated in answer to Judge Lovett that the Union Pacific and the Southern Pacific are each still struggling to get all the transcontinental business they can out of New York?

A. Yes, sir.

Q. Still competing with each other?

A. Yes, sir.

Q. On transcontinental traffic?

A. Yes, sir.

By Mr. LOVETT:

Q. The Union Pacific does not compete with you east of the Missouri River, does it?

A. No, sir.

1510 LOUIS M. ALLEN,

being duly sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. SEVERANCE:

Q. Mr. Allen, where do you live?

A. Westwood, New Jersey.

Q. And what is your business?

A. Railroad business.

Q. In connection with what railroad?

A. The New York Central.

Q. How long have you been connected with the New York Central?

A. Consecutively since 1888.

Q. And in what capacity?

A. As clerk, soliciting agent, division freight agent, assistant general eastern agent, commercial agent, general eastern freight agent.

Q. I think you told me this morning that you had just resigned as general eastern agent, to take some other position.

A. No. I have not resigned, but I was transferred to other duties the 1st day of January.

Q. You have had railroad experience other than with the New York Central?

A. Yes.

Q. With what road?

A. I was with one of the New York Central fast freight lines, the Merchants' Despatch Transportation Company; that was my first service. I was also with the Associated Roads of Virginia and Carolina at one time.

Q. Take it all together, how many years have you been railroading?

A. Since 1868.

Q. And all the time in the traffic end of the business?

A. Always in the traffic department.

Q. You say that you have been for some time the general
1511 eastern agent, and you have been continuously with the New York Central since 1880, and has that been in connection with securing business, soliciting business?

A. Soliciting business.

Q. All classes?

A. All classes.

Q. Your lines participate in transcontinental business?

A. Yes, sir.

Q. And have you worked with other lines to get that business?

A. Yes, sir.

Q. Over what lines do you ship to the Pacific Coast; that is, over what lines does business originating on the New York Central move to the Coast?

A. It moves over various lines; it depends on what gateway.

Q. I am speaking of over what transcontinental line. You understand what I mean by the transcontinental lines?

A. Well, it would move over any line from Chicago, or from St. Louis, or from Cincinnati, or Louisville.

Q. Or by St. Paul?

A. Or by St. Paul. Of course that would be Chicago, by lake and rail.

Q. I speak of the transcontinental lines as distinguished from those east of the Missouri.

A. Yes.

Q. Now what is the fact as to whether these different transcontinental lines, beginning on the north with the Great Northern and going south to the Sunset Route, have been during your time here in New York in competition with each other to get the traffic over their respective lines to the Coast? What is the fact about that?

A. I don't understand your question.

Q. Well, I will put it in different form. Have the different
1512 transcontinental lines, beginning with the Great Northern on the north, the Southern Pacific on the south (the Sunset

Route), been competing here and endeavoring to get business over their respective lines to the coast, or have they not?

A. Oh, yes.

Q. They have. Do they all maintain separate agencies?

A. Yes.

Q. What relation, if any, have you had with these various agencies?

A. I have had more or less relations with all of them; that is, in our efforts to secure business for our lines.

Q. For your lines?

A. Yes.

Q. Yes; I suppose trying to procure business for their lines.

A. Yes, sir.

Q. Do you remember the time that Mr. Hawley represented the Southern Pacific here?

A. Yes, sir.

Q. Concerning which he testified. I don't know whether you heard him or not. He testified here this morning. You were engaged all that time yourself in this work in New York, were you not?

A. Yes, sir.

Q. Were you at that time familiar with the competition that was being made by Hawley as against other lines?

A. Oh, yes.

Q. That was well known in the business, was it?

A. Yes, sir.

Q. Was or was not the Union Pacific competing for Coast business against the Sunset Route?

A. Yes, sir, they were.

Q. How do the different agents work together (I mean not agents of competing lines, but of connecting lines) in handling
1513 traffic?

A. Well, it is more a matter of reciprocity than anything else. If one has a carload, why, he will swap it off with anybody else that has got a carload, if it is possible; that is, all the conditions being equal.

Q. Is that a condition or method of securing business that is in common vogue by soliciting agents?

A. Oh, yes, that is one of the favorite methods of procuring business; that is, with the connecting lines.

Q. That is what I mean.

A. It is a matter of reciprocity.

Q. Did you ever know of business being routed to San Francisco by way of Portland and the steamship line down?

A. I think that some years ago there was business routed that way. I do not recollect just when it occurred, but in a general way I should say that there had been business moving.

Q. Was that at some time when competition was pretty strong, or something of that sort?

A. Yes, sir.

Q. Was that the occasion of it?

A. Yes, sir.

Q. Did you have anything to do with securing east-bound traffic from the Coast?

A. Yes, sir.

Q. Have you had for a good many years?

A. Yes, sir.

Q. How do you work for that traffic?

A. We work through the consignees here; we work on information that we obtain, sending it sometimes to our representatives on the Pacific Coast; and other times we work through the representatives of the transcontinental lines.

Q. Suppose you found that a car or a train-load of stuff was coming East and was routed over the Union Pacific from Portland
1514 or San Francisco, how would you proceed to work with them? What would you do in working with them to get control of that business? I want to get at the method.

A. Why, we would see the agent of the Union Pacific road and ask him to route it over the New York Central.

Q. And that would be an occasion for some of this swapping that you spoke of, this reciprocity?

A. Yes, sir.

Q. Now, was that a frequent occurrence—that sort of transaction?

A. Oh, yes, that was a very frequent occurrence.

Q. During all the time you have been in the business?

A. Yes, sir.

Q. Is it usual when transcontinental business is secured by the agent of one line—for instance, suppose you secured it: is it usual for the consignor or consignee (from whichever you get it) to permit you to route it, or does he usually route it himself?

A. Well, that would happen both ways. Sometimes they would indicate the routing all the way through, and sometimes they would simply give the business to us and leave us to route it beyond our line.

Q. Beyond your own line?

A. Yes.

Q. Well, that is about the usual thing in the railroad business, isn't it—sometimes one way and sometimes the other?

A. It is sometimes one way and sometimes another.

Q. Now, is it customary in the railroad business, when a shipper gives a car or a shipment of merchandise to be transported across the continent, to an initial line, to respect his wishes as to the way it shall move off the line, if he gives you instructions?

A. Yes.

1515 Q. It is customary to do that in the railroad business, isn't it?

A. I think so, yes, sir.

Q. And this reciprocity that you speak of applies to the unrouted traffic?

A. Yes, sir.

Q. That is, it is left for you to send it by whatsoever line you please off your own line?

A. Yes, sir.

Q. Do you do any business with the Canadian Pacific on transcontinental business?

A. We do a certain amount of business into Winnipeg and into Vancouver and points of that kind—into the Northwest.

Q. Puget Sound country?

A. Yes, sir.

Q. Does any traffic move from there south at the present time, as far as you know?

A. No, I think not.

Q. Do you remember the time that the Canadian Pacific had any differential?

A. Why, in a general way, yes. I recollect that they did start in there with a differential at one time.

Q. At that time some traffic moved under that differential to San Francisco, didn't it?

A. Some traffic did.

Q. Did you participate in any of that?

A. I don't recollect. I think, however, we did, but I will not be sure.

Cross-examination by Mr. LOVETT:

Q. You actively solicit business for the New York Central lines from this territory to the Pacific Coast, don't you, Mr. Allen?

A. Yes, sir.

Q. You say you route it by all lines, all gateways?

A. Yes, sir.

Q. And you mentioned the gateways of Louisville, St. Louis——

Mr. SEVERANCE. No, he didn't mention Louisville.

Mr. LOVETT. He said Louisville.

1516 Mr. SEVERANCE. Oh, did he? I beg your pardon.

WITNESS. Yes, I said Louisville. We had a line that we operated over the West Shore road and over the Wabash and the Missouri Pacific, the D. & R. G., and the Central Pacific, and later on into Southern California points we operated over the Clark road from Salt Lake City by the same route.

Q. Which way does the principal traffic that you control for Pacific coast points go? By the Union Pacific, doesn't it?

A. Yes, sir.

Q. The Union Pacific, and thence over the Southern from Ogden, west?

A. Yes, sir.

Q. The fact that these intermediate carriers have agents also soliciting does not indicate that they are competing with everybody else who is soliciting, does it?

A. Well, it means that we had to work with them. We often had to work with them for business that they controlled or business that they influenced.

Q. Have the Chicago, Milwaukee & St. Paul and the Chicago & Northwestern soliciting agents in New York?

A. Yes, sir.

Q. They work also for transcontinental traffic, don't they?

A. Yes, sir.

Q. They are not competitors of yours, are they?

A. Oh, no.

Q. They are connecting lines?

A. Connecting lines.

Q. And the Union Pacific in having soliciting agents here works for the transcontinental traffic, and it is not a competitor of those lines for that traffic, is it?

A. No, sir.

Q. You said that sometimes, if you knew a car had been routed from California eastward, over the Union Pacific, you would see the Union Pacific agent and try to get him to route that over
1517 your lines, east of his lines. Are not those cases very rare, Mr. Allen?

A. No, I think not.

Q. Can you recall an instance where it occurred?

A. No, I can not recall any particular instances; that is, not definitely, but at the same time we have been compelled a great many times to go not only to the Union Pacific, but to other Western roads and say to them, "We understand that you control a certain amount of business," specifying the particular business—that is, from California; we would simply say, "We want a share of that; we want a piece of that business."

Q. What are your active competitors for this transcontinental traffic?

A. All of the trunk lines.

Q. Every line leading out of New York?

A. Every line leading out of New York, including the Southern Pacific.

Q. Including the Sunset route and every line out of New York?

A. Yes, sir.

Q. The Union Pacific is not a competitor of yours for that traffic, as I understood you to say?

A. No, the Union Pacific is a connection.

Q. Yes. And all of the trunk lines out of here are competing with each other, and the Sunset Route (both lines), for that business, and also the Mallory line?

A. Yes, sir.

Q. You were asked about the movement of business by boat line from Portland, between Portland and San Francisco. Have you any knowledge of that matter, Mr. Allen?

A. Why, it is so indistinct that I would not like to say that I have. I simply have a recollection that there was some business moved
1518 that way several years ago.

Q. You don't remember what year?

A. No, sir, I would not like to say.
Q. You could not say that any of it moved that way, could you?
A. Only in a general way. I would not like to say definitely.
Q. The movement that way you never knew to be of any particular significance or importance, did you? That is, if there was any moved, it was very small, wasn't it?
A. That I could not say, sir.
Q. Did you ever attempt to route any that way?
A. I would not like to say that I did.
Mr. SEVERANCE. Well, would you like to say you have not?
WITNESS. No, I would not like to say that I have not.
Mr. SEVERANCE. Well, I will excuse you from saying it.
Mr. LOVETT. So will I.

The EXAMINER. We will now take an adjournment until 3 o'clock tomorrow afternoon. All the witnesses who are here, who have not been examined, will return at that time.

(Adjourned until the afternoon of Thursday, January 7, 1909.)

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